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#02909
Sup. Ct.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 658

LAMBIRIS SKIRIOTES, APPELLANT,

vs.

THE STATE OF FLORIDA

APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

FILED DECEMBER 28, 1940.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 5, 1941.

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[fol. 1] **IN SUPREME COURT OF FLORIDA**

Certiorari

LAMBIRIS SKIRIOTES

vs.

THE STATE OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

Comes now Lambiris Skiriotes in prp persona and by his attorneys, Dickenson & Dickenson, and petitions this Honorable Court for a Writ of Certiorari commanding the Clerk of the Circuit Court of the Sixth Judicial Circuit of Florida, in and for Pinellas County, to transmit to this Court a true copy of the record and all proceedings in that certain cause in the said Circuit Court of Pinellas County, Florida, wherein Lambiris Skiriotes was Appellant and E. G. Cunningham, as Sheriff of Pinellas County, Florida, was Appellee, and wherein an order and judgment has been entered by the Honorable John U. Bird, one of the Judges of the said Circuit Court, wherein and whereby the said Circuit Judge did sustain the judgment of conviction and sentence of the said Lambiris Skiriotes, which said judgment of conviction was entered in the County Court of Pinellas County, Florida, and which said sentence of Lambiris Skiriotes was entered in the County Court of Pinellas County, Florida, finding the said Lambiris Skiriotes guilty of violating the provisions of Section 4 of Chapter 7389, [fol. 2] Laws of Florida of 1917, carrying forward of Section 8087 of the Compiled General Laws of Florida, 1927; copy of which said Order of the said Circuit Court is hereto attached and marked Exhibit "A" and made a part hereof, reference thereto being prayed as often as may be necessary; and for grounds of said petition your petitioner respectfully represents unto Your Honor that there was filed by the Prosecuting Attorney of Pinellas County, Florida, in the said County Court of Pinellas County, Florida, an

Information against the said Lambiris Skiriotes charging him with violating the provisions of law above set forth. That thereafter the said Lambiris Skiriotes filed in said cause his Motion to Quash the Information filed against him as aforesaid, which said Motion to Quash the Information was overruled and denied by the Court. That thereafter the said Lambiris Skiriotes was duly arraigned and entered a plea of not guilty. The cause thereupon proceeded to trial under an agreed statement of facts, there being no dispute or contention with respect to the actual facts and circumstances, and upon the trial in the said County Court by stipulation of both parties a jury was waived and said cause was heard and determined by the judge of the said County Court of Pinellas County, Florida, in the absence of a jury; the said Judge of the said County Court did find the said Lambiris Skiriotes guilty as charged in the Information; the said Lambiris Skiriotes thereupon filed his Motion for New Trial and also a Motion in Arrest of Judg-
[fol. 3] ment; upon hearing of the said Motions and argument of counsel thereupon the said Judge of the said County Court did deny each of said Motions and thereupon did pass sentence and judgment upon the said Lambiris Skiriotes; thereafter the said Lambiris Skiriotes did file his Notice of Appeal to the Circuit Court of the Sixth Judicial Circuit of Florida in and for Pinellas County; the said appeal was duly and legally perfected and the said cause came on for hearing before the said Circuit Court on appeal; all of which will more fully appear by a complete copy of the record of proceedings in said cause hereto attached and made a part of this application as fully as though set out herein in haec verba, reference thereto being prayed as often as may be necessary, the same being marked Exhibit "B".

That upon a hearing duly held before the said Circuit Court of Pinellas County, Florida, and upon argument of counsel, the said Circuit Court did affirm the judgment of the County Court of Pinellas County, Florida; a copy of the judgment of the said Circuit Court being hereto attached and marked Exhibit "A"; that your petitioner has no remedy by way of appeal from said order, your petitioner's only remedy being by application to this Honorable Court for Writ of Certiorari; that there is involved in this cause not only the interest and constitutional rights of this defendant but a question of large public interest affect-

ing a large number of citizens of the State of Florida, to [fol. 4] wit, all persons engaged in the sponge industry which is one of the largest industries of the State of Florida, and that it is necessary that this cause be reviewed by this Honorable Court in order that the law with respect to the matters involved in this litigation may be fully, definitely and finally adjudicated and determined, and the rights, privileges, and immunities of a large class of citizens of the State of Florida may be fully determined and settled.

Wherefore your petitioner prays that a Writ of Certiorari may be issued out of and by this Honorable Court directed to the Clerk of the Circuit Court of the Sixth Judicial Circuit of Florida in and for Pinellas County, commanding him to transmit to this Court a true copy of all records and proceedings in said cause in order that this Court upon inspection of the same may fully settle and determine the rights of all parties involved.

Lambiris Skiriotes, Petitioner. Dickenson & Dickenson, by W. B. Dickenson, Attorneys for Petitioner.

[fols. 5-7] *Duly sworn to by W. B. Dickenson. Jurat omitted in printing.*

Clerk's certificate to transcript from Circuit Court omitted in printing.

[fol. 8] EXHIBIT "A" TO PETITION

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR PINELLAS COUNTY

Min. Cir. Ct. 28, Pg. 3

LAMBIRIS SKIRIOTES, Appellant,

vs.

THE STATE OF FLORIDA, Appellee

Appeal from the County Court of Pinellas County, Florida

JUDGMENT—April 30, 1940

This cause is before this Court on appeal from that certain judgment of conviction of the Appellant entered by the Judge of the County Court, in and for Pinellas County,

Florida, on the 27th day of January A. D. 1940, wherein and whereby the said Judge, who by stipulation acted without the intervention of a jury, found the defendant, Lambiris Skiriotes, guilty as charged in the Information.

And also on appeal from the final judgment and sentence of the defendant by the said judge of the County Court, in and for Pinellas County, Florida, set forth at page 32 of the transcript, under which judgment and sentence the said Appellant, Lambiris Skiriotes, was by the Judge of the County Court of Pinellas County, Florida, sentenced to serve two days in the county jail of Pinellas County, Florida, and in addition thereto pay a fine of Fifty ($50.00) Dollars.

This Court, having inspected the record herein, finds that this Court has jurisdiction of the parties and the subject matter and that the Appellant was convicted and sentenced [fol. 9] under an Information filed by the Prosecuting Attorney for Pinellas County, Florida, under the provisions of Section 8087 of the Compiled General Laws of Florida, the said Section being a carrying forward of Section 4 of Chapter 7389, Laws of Florida of 1917.

The Court further finds that the said statute does not define what are and constitute the "territorial waters of the State of Florida", but that the Constitution of 1885, which is the present constitution of the State of Florida, undertakes to define what constitutes the territorial limits of the State of Florida and that the constitutional provision places the western limit of the State of Florida off the West shore of Pinellas County, Florida, at a line drawn parallel with mean low tide on the shore line of Pinellas County and nine nautical miles or three marine leagues from shore; that this boundary, fixed by the Constitution, would include within the territorial waters of the State of Florida and within the territorial waters of Pinellas County, Florida, a strip of water lying parallel to and West of mean low tide on the shore line of Pinellas County, Florida, nine nautical miles wide extending East and West.

The Court further finds that under the agreed stipulation of facts, upon which stipulation the County Judge based his findings and conclusion, verdict and judgment, conclusively establishes the fact without dispute that the Appellant was arrested at a point two marine leagues from mean low tide [fol. 10] on the shore line of Pinellas County, Florida, and two marine leagues from the nearest point of land of Pinel-

las County, Florida, while diving for commercial sponge by the use of ordinary diving apparatus commonly used by deep-sea divers for the purpose of taking or catching commercial sponges from the floor of the Gulf of Mexico, and at the time of his arrest was in the act of and did take commercial sponges at that time and place from the floor of the Gulf of Mexico by the use of said diving apparatus.

The Court further finds that the appellant assigns the following grounds of appeal from the judgment of conviction and sentence of appellant by the said Judge of the County Court in and for Pinellas County, Florida, to wit:

1. The Court erred in overruling and denying the defendant's Motion to Quash the Information filed against him in this cause.

2. The Court erred in holding and determining that the jurisdiction of the Criminal Courts of the State of Florida extends westward from mean low tide on the mainland and adjacent islands of the State of Florida a distance of three marine leagues or nine nautical miles.

3. The Court erred in holding that the boundaries of the State of Florida, as fixed by the Constitution of Florida of 1885, extending three marine leagues West from mean low tide on the West Coast of Florida, did not violate Section One of Article 14 of the Constitution of the United States of America, originally adopted as the Fourteenth Amendment to the Constitution of the United States of America.

4. The Court erred in holding and determining that the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida of 1885, were not violative of [fol. 11] Article 6 of the Constitution of the United States of America.

5. The Court erred in holding that the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida of 1885, were valid and not in violation of Article 2, Section 2, Clause 2, of the Constitution of the United States of America.

6. The Court erred in holding that the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida of 1885, were valid and enforceable and not in violation of Article One, Section 10, Paragraph One of the Constitution of the United States of America.

7. The Court erred in holding that the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida of 1885, were valid and not in violation of Article One, Section 10, Paragraph 3 of the Constitution of the United States of America.

8. The Court erred in holding that the law of the State of Florida under which the Information was filed against the defendant in this cause, and which law is based upon the boundaries of the State of Florida as established by the Constitution of the State of Florida of 1885 was not in violation of the various treaties made and entered into by the United States of America, each of which is specifically set forth in the Motion to Quash the Indictment.

9. The Court erred in holding that the law under which the Information in this cause was filed against this defendant and which said law is based upon and of necessity relies [fol. 12] upon the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida of 1885, is valid and not in violation of the decisions of the Political and Executive Departments of the Federal Government as to what is and constitutes the extreme limits of the territorial boundaries of the United States of America, as will be more fully shown by reference to the Seventh Ground of the Motion to Quash the Information.

10. The Court erred in holding and determining under the evidence in this cause submitted to the Court in an agreed statement of facts, the same being filed in this cause, that the alleged offense charged in the Information against the defendant under the agreed statement of facts occurred, was committed, done and performed within the territorial jurisdiction of the Criminal Courts of the State of Florida.

11. The Court erred, under the facts shown by this record, in holding and determining that this Court had jurisdiction to try and determine the charge in the Information.

12. The Court erred in his determination and holding that the territorial limits of the State of Florida extend westward from mean low tide on the shore line of the State of Florida and adjacent islands thereto a distance of three marine leagues into the Gulf of Mexico.

13. The Court erred in its order overruling and denying the Motion for New Trial upon each of the grounds therein set forth.

[fol. 13] 14. The Court erred in his order overruling and denying the defendant's Motion in Arrest of Judgment upon each of the grounds set forth in the said Motion.

The Court, having inspected the record of proceedings and the evidence contained therein, and the law with relation thereto, is of the opinion that the verdict and final judgment and sentence of the Appellant by the lower Court should be sustained for the following reasons:

This Court is of the opinion and so holds that the jurisdiction of the Criminal Courts of the State of Florida does extend nine nautical miles or three marine leagues from mean low tide on the Coast line of the State of Florida westward into the Gulf of Mexico, notwithstanding the various provisions of the Constitution of the United States set forth in the Grounds of Appeal.

2. The Court is of the opinion and so holds that the boundaries of the State of Florida on the West shore of the State of Florida as fixed by the Constitution of the State of Florida of 1885 extending the western boundary of the State of Florida three marine leagues from mean low tide on the western coast of the State of Florida and adjacent islands is valid and binding on the courts of the State of Florida, notwithstanding the following provisions of the Constitution of the United States, to wit: Article 6, Article 2, Section 2, Clause 2; Article 1, Section 10, Paragraph 1; Article 1, Section 10, Paragraph 3.

3. This Court is further of the opinion and holds that the boundary line fixed as the western boundary of the State of [fol. 14] Florida by the Constitution of 1885 is valid and binding upon the Criminal Courts of the State of Florida, notwithstanding the various treaties entered into with foreign countries set forth in the record and which said treaties of the United States were entered into pursuant to the authority of the Constitution of the United States, and each and all of the same fix the international boundary at one marine league from mean low tide on the shore line of the mainland and adjacent islands.

4. The Court is further of the opinion and holds that the western boundary line of the State of Florida as fixed by the Constitution of the State of Florida of 1885 is valid and binding on the Criminal Courts of the State of Florida, notwithstanding the decisions and political opinions of the Executive Department of the Federal Government announced since 1794 down to the present time to the effect that the extreme limits of the territorial boundaries of the United States of America is and shall be a line parallel with and one marine league from mean low tide on the shore of the mainland and adjacent islands of the United States, which said line is and constitutes the recognized international boundary line.

Wherefore the judgment of conviction of the Appellant by the County Court of Pinellas County, Florida, and the sentence imposed on the Appellant by the County Court of Pinellas County, Florida, are each hereby affirmed.

Done and Ordered at Clearwater, Pinellas County, Florida, this 30th day of April, A. D. 1940.

John U. Bird, Judge of the Said Court.

[fol. 15] EXHIBIT "B" TO PETITION

IN COUNTY COURT IN AND FOR PINELLAS COUNTY, FLORIDA

THE STATE OF FLORIDA

vs.

LAMBIRIS SKIRIOTES

Information for: Violation of Section 8087 Compiled General Laws of Florida prohibiting the use of diving apparatus in taking sponge.

Certified Copy of Appeal Papers

I, Ray E. Green, Clerk of the County Court, in and for Pinellas County, Florida, in compliance with Section 301 of Chapter 19554, have prepared the necessary appeal papers in the above entitled cause and attached the same hereto as follows:

IN COUNTY COURT IN AND FOR PINELLAS COUNTY

[Title omitted]

NOTICE OF APPEAL TO CIRCUIT COURT—Filed Feb. 26, 1940

Comes now the above named defendant, Lambiris Skiriotes, and enters this his appeal in the above entitled cause from the judgment of conviction heretofore entered against this defendant in said cause and from the sentence interposed [fol. 16] upon this defendant upon the said judgment of conviction, and makes the same returnable in the Circuit Court of the Sixth Judicial Circuit of Florida, in and for Pinellas County, on the 29th day of March, A. D. 1940.

Dickenson & Dickenson, by W. B. Dickenson, Jr., Attorneys for Defendant.

(Back of Instrument)

Co. Ct. 13, Page 404.

STATE OF FLORIDA,
County of Pinellas:

Came to hand this 26th day of February 1940, and executed the same in Pinellas County, Florida, on the 26th day of February, 1940, by delivering a true copy of the original, to Chester B. McMullen, State's Attorney, of the Sixth Judicial Circuit of Florida, in and for Pinellas County, for The State of Florida, the within named Defendant.

E. G. Cunningham, Sheriff, Pinellas County, Florida, by Geo. J. Bolton D/S 4449 Co. Cr.

[fol. 17] ENTRY OF APPEAL

Filed for Record in the Office of the Clerk of the Circuit Court of the County of Pinellas, State of Florida, on Feb. 26, 1940, at 5:00 o'clock P. M. and recorded in Co. Ct. Record No. 13 on Page 403 and the Record verified.

Ray E. Green, Clerk, by Annie Mae Holley, D. C.

Dickenson & Dickenson, Attorneys for Defendant.

[File endorsement omitted.]

IN COUNTY COURT OF PINELLAS COUNTY

STATE OF FLORIDA

vs.

LAMBIRIS SKIRIOTES

INFORMATION FOR VIOLATION OF SECTION 8087, COMPILED GENERAL LAWS OF FLORIDA PROHIBITING THE USE OF DIVING APPARATUS IN TAKING SPONGE—Filed January 20, 1940

In the Name and By the Authority of the State of Florida:

Henry S. Baynard, Prosecuting Attorney, for the County of Pinellas, prosecuting for the State of Florida, in the said County, under oath, information makes that Lambiris Skiriotes of the County of Pinellas and State of Florida, on the 8th day of March in the year of our Lord, one thousand nine hundred and thirty-eight, in the County and State aforesaid, knowingly, willfully and unlawfully maintained and used for the purpose of catching or taking commercial sponges from the Gulf of Mexico within the territorial limits of the State of Florida, to wit, at a point more than one marine league from mean low tide on the West shore line of [fol. 18] the State of Florida and Southwest of Anclote Key and Northwest of Hog Island and within three marine leagues of mean low tide on the West shore line of the State of Florida at a point approximately two marine leagues from mean low tide on the West shore line of the State of Florida and within the territorial limits of the County of Pinellas, a diving suit, helmet, and other apparatus used by deep-sea divers, and did then and there catch or take commercial sponges from the Gulf of Mexico in violation of the provisions of Section 4 of Chapter 7389, Laws of Florida, enacted in 1917 and re-enacted as Section 8087, Compiled General Laws of Florida adopted in 1927, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Florida.

Henry S. Baynard, Prosecuting Attorney, Pinellas County, Florida.

STATE OF FLORIDA,
County of Pinellas:

Personally appeared before me the undersigned Prosecuting Attorney for Pinellas County, Florida, who being first duly sworn, says that the allegations as set forth in the foregoing are based upon facts that have been sworn to as true, and which if true, would constitute the offense therein charged.

Henry S. Baynard, Prosecuting Attorney.

Sworn to and subscribed before me this 20th day of January, A. D. 1940. Ray E. Green, Clerk of the County Court, by Ina Belle Helms, D. C. (The County Court Seal, Pinellas County, Florida.)

[fol. 19] (Back of instrument) Witnesses for the State: E. G. Cunningham, Samuel Mickler.

[File endorsement omitted.]

[fol. 20] IN COUNTY COURT OF PINELLAS COUNTY

[Title omitted]

MOTION TO QUASH INFORMATION

To the Honorable Jack F. White, Judge of the Said Court:

Comes now the above named Defendant, Lambiris Skiriotes, by his attorneys, Dickenson & Dickenson, of Tampa, and respectfully shows unto the Court that the Information filed against him in the above entitled cause on January 19, 1940, wholly fails to charge this Defendant with the violation of any valid statute or law of the State of Florida, but on the contrary shows upon its face that this Defendant could not under the allegations of the Indictment be held guilty of violation of any valid law of the State of Florida, in this, the said Information charges that this Defendant at a point more than one marine league from mean low tide on the West shore line of the State of Florida at a place approximately two marine leagues from shore was using diving apparatus commonly used by deep-

sea divers for the purpose of taking or catching commercial sponges from the Gulf of Mexico; that the said place and point charged in the Information is outside of the territorial limits of the United States of America, and therefore necessarily outside of the territorial limits of the State of Florida, which obviously could not extend without the territorial limits of the United States; that the said Information was filed under the provisions of Section 4 of Chapter 7389, [fol. 21] Laws of Florida enacted by the Legislature of Florida in 1917, and re-enacted as Section 8087, Compiled General Laws of Florida adopted in 1927; that the said law under which the Information was filed is invalid, unenforceable, null and void by reason of the fact that the same is unconstitutional being in violation of the provisions of the Constitution of the United States of America now enforced; to wit: Section One of Article 14, originally adopted as the Fourteenth Amendment to the Constitution of the United States.

Second. The said statute of the State of Florida under which the said Information was filed violates the provisions of Article 6 of the Constitution of the United States of America.

Third. The said law of the State of Florida under which the Information was filed violates Article 2, Section 2, Clause 2, of the Constitution of the United States of America.

Fourth. The law of the State of Florida under which the Information was filed in this cause violates Article One, Section 10, Paragraph One, of the Constitution of the United States of America.

Fifth. The law of the State of Florida under which the said Information was filed violates Article One, Section 10, Paragraph 3, of the Constitution of the United States of America.

Sixth. The law of the State of Florida under which the Information was filed against this Defendant in this cause is null and void in that it violates the treaty provisions of the United States of America in the following respects and following treaties:

[fol. 22] The treaty entered into between the United States of America and Spain and designated a treaty of amity,

settlement, and limits, which was signed at Washington, February 22, 1819; ratification of the same being advised by the Senate, February 19, 1821; same being ratified by the President, February 22, 1821; the same being ratified by Spain, October 24, 1820; ratifications exchanged at Washington, D. C. February 22, 1821; and proclaimed by the President on February 22, 1821; the same being the treaty under which the United States acquired from Spain the State of Florida, which said treaty conveyed to the United States only the uplands of the Peninsular of Florida, together with certain islands lying adjacent thereto, and fixed the boundaries of the State of Florida at mean low tide on both the Atlantic Ocean and the Gulf Coast of the State.

Treaty Series, No. 685. Convention between the United States and Great Britain—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, January 23, 1924; Ratification advised by the Senate, March 13, 1924; Ratified by the President, March 21, 1924; Ratified by Great Britain, April 30, 1924; Ratifications exchanged at Washington, May 22, 1924; Proclaimed, May 22, 1924.

Treaty Series, No. 694. Convention between the United States and Germany—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, May 19, 1924; Ratification advised by the Senate, May 26, 1924; Ratified by the President, August 9, 1924; Ratified by Germany, July 8, 1924; Ratifications exchanged at Washington, August 11, 1924; Proclaimed, August 11, 1924.

Treaty Series, No. 693. Convention between the United States and Denmark—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, May 29, 1924; Ratification advised by the Senate, June 3, 1924; Ratified by the President, July 11, 1924; Ratified by Denmark, July 8, 1924; Ratifications exchanged at Washington, July 25, 1924; Proclaimed July 25, 1924.

Treaty Series, No. 702. Convention between the United States and Italy—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, June 3, 1924; Ratification advised by the Senate, June 4, 1924; Ratified by the President, October 16, 1924; Ratified by Italy, July 7, 1924; Ratifications exchanged at Washington, October 22, 1924; Proclaimed, October 22, 1924.

Treaty Series, No. 689. Convention between the United States and Norway—Prevention of Smuggling of Intoxi-

cating Liquors; Signed at Washington, May 24, 1924; Rati-
[fol. 23] fication advised by the Senate, May 31, 1924; Ratified by the President, June 20, 1924; Ratified by Norway, June 20, 1924; Ratifications exchanged at Washington, July 2, 1924; Proclaimed, July 2, 1924.

Treaty Series, No. 698. Convention between the United States and Sweden—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, May 22, 1924; Ratification advised by the Senate, May 26, 1924; Ratified by the President, August 15, 1924; Ratified by Sweden, June 13, 1924; Ratifications exchanged at Washington, August 18, 1924; Proclaimed, August 18, 1924.

Treaty Series, No. 712. Convention between the United States and the Netherlands—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, August 21, 1924; Ratification advised by the Senate, December 10, 1924; Ratified by the President, February 26, 1925; Ratified by the Netherlands, March 31, 1925; Ratifications exchanged at Washington, April 8, 1925; Proclaimed April 8, 1925.

Treaty Series, No. 707. Convention between the United States and Panama—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, June 6, 1924; Ratification advised by the Senate, December 10, 1924; Ratified by the President, January 15, 1925; Ratified by Panama, December 30, 1924; Ratifications exchanged at Washington, January 19, 1925; Proclaimed, January 19, 1925.

Treaty Series, No. 749. Convention between the United States and Spain—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, February 10, 1926; Ratification advised by the Senate, March 3, 1926; Ratified by the President, March 30, 1926; Ratified by Spain, July 20, 1926; Ratifications exchanged at Washington, November 17, 1926; Proclaimed, November 17, 1926.

Treaty Series, No. 738. Convention between the United States and Cuba—Prevention of Smuggling of Intoxicating Liquors; Signed at Habana, March 4, 1926; Ratification advised by the Senate, April 9, 1926; Ratified by the President, April 15, 1926; Ratified by Cuba, June 17, 1926; Ratifications exchanged at Habana, June 18, 1926; Proclaimed June [illegible] 1926.

Treaty Series, No. 755. Convention between the United States and France—Prevention of Smuggling of Intoxicat-

ing Liquors; Signed at Washington, June 30, 1924; Ratification advised by the Senate, December 12, 1924; (Legislative Day of December 10, 1924) Ratified by the President December 30, 1924; Ratified by France, March 1, 1927; Ratifications exchanged at Washington, March 12, 1927; Proclaimed, March 12, 1927.

[fol. 24] Treaty Series, No. 829. Prevention of Smuggling of Intoxicating Liquors—Convention between the United States of America and Chile; Signed at Washington, May 27, 1930; Ratification advised by the Senate of the United States, June 28, 1930; Ratified by the President of the United States, July 21, 1930; Ratified by Chile, October 2, 1930; Ratifications exchanged at Washington, November 25, 1930; Proclaimed by the President of the United States, November 26, 1930.

Treaty Series, No. 772. Convention between the United States and Greece—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, April 25, 1928; Ratification advised by the Senate, May 25, 1928; (Legislative Day of May 3, 1928); Ratified by the President, June 11, 1928; Ratified by Greece, January 8, 1929; Ratifications exchanged at Washington, February 18, 1929; Proclaimed, February 18, 1929.

Treaty Series, No. 807. Convention between the United States and Japan—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, May 31, 1928; Ratification advised by the Senate, January 26, 1929; Ratified by the President, January 30, 1929; Ratified by Japan, November 22, 1929; Ratifications exchanged at Washington, January 16, 1930; Proclaimed, January 16, 1930.

Treaty Series, No. 759. Convention between the United States and Belgium—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, December 9, 1925; Ratification advised by the Senate, March 3, 1926; Ratified by the President, March 30, 1926; Ratified by Belgium, December 5, 1927; Ratifications exchanged at Washington, January 11, 1928; Proclaimed, January 11, 1928.

Treaty Series, No. 821. Prevention of Smuggling of Intoxicating Liquors—Convention between the United States of America and Poland; Signed at Washington, June 19, 1930; Ratification advised by the Senate of the United States, June 28, 1930; Ratified by the President of the United States July 11, 1930; Ratified by Poland, August 1,

1930; Ratifications exchanged at Warsaw, August 2, 1930; Proclaimed by the President of the United States, August 8, 1930.

Seventh. The said law of the State of Florida under which the Information was filed against this Defendant in this cause violates the decision of the political and executive departments of the federal government on the question of what is and constitutes the extreme limits of the territorial boundaries of the United States of America shown by the Report of the 1929 Conference at Geneva of [fol. 25] the League of Nations, issued by the Publications Department of the League of Nations "Conference for the Codification of International Law" Tome II.—Eaux Territoriales.

Also, on November 8, 1793, Mr. Jefferson, then Secretary of State, wrote a letter to the British Minister at Washington, in which he said that the President had instructed him to say that officers acting under his authority to consider those heretofore given them as restrained for the present to the distance of one sea league or three geographical miles from the seashores. 1 Moore's Digest of International Law, page 702; League of Nations Conference for the Codification of International Law, Vol. 2, page 129.

On the same date Mr. Jefferson addressed to the French Minister to the United States, a note to the same effect. (1 American State Papers, Foreign Relations, 183.)

On September 2, 1796, Mr. Pickering, Secretary of State, addressed to Lieutenant-Governor of Virginia, as Follows:

"Our jurisdiction * * * has been fixed to extend three geographical miles from our shores."

1 Moore's Digest of International Law, page 704, League of Nations, Vol. 2, page 129.

On February 3rd, 1807, Mr. Madison, Secretary of State, addressed Messrs. Monroe and Pinkney, Ministers to England, as follows:

"There could surely be no pretext for allowing less than [fol. 26] a marine league from the shore, that being the narrowest allowance found in any of the authorities on the law of nations."

1 Moore's Digest — International Law, page 705, League of Nations, Vol. 2, page 129.

On December 16, 1862, Mr. Seward, Secretary of State, addressed a letter to Mr. M. Tassara, Spanish Minister, stating that the United States territory extended one marine league or three miles from the coastline. (1 Moore's Digest of International Law, page 706-707; League of Nations Conference for the Codification of International Law, Vol. 2, page 129-130.)

On May 28, 1886, Mr. Bayard, Secretary of State, wrote Mr. Manning, Secretary of the Treasury, in which he said:

"The position of this department has uniformly been that the sovereignty of the shore does not, so far as territorial authority is concerned, extend beyond three miles from low-water mark, etc."

1 Wharton's Digest of International Law, page 107; 1 Moore's Digest of International Law, page 720; League of Nations, Vol. 2, page 130.

On July 3, 1902, Mr. Herbert H. D. Pierce, Agent of the United States in the C. H. White case, Russian arbitration, in reply to the question asked by Mr. T. M. C. Asser, arbitrator, said:

"The Government of the United States claims, neither in Bering Sea nor in its other bordering waters, an extent of jurisdiction greater than a marine league from its shores, etc."

[fol. 27] U. S. Foreign Relations 1902, Appendix 1, pages 440, 461; League of Nations Conference for the Codification of International Law, Vol. 2, page 130.

On January 23, 1904, in an address of Mr. Chief Justice Charles E. Hughes, of the Supreme Court of the United States, then Secretary of State, reprinted in 18 Am. Journal of International Law, pages 229-230-231, said:

"The Government of the United States has repeatedly asserted that the limits of territorial waters extend to three marine miles outward from the coast-line. This has been asserted by our Government in making claims upon other Governments. . . .

"It is quite apparent that this Government is not in a position to maintain that its territorial waters extend beyond the three mile limit."

League of Nations Conference for the Codification of International Law, Vol. 2, page 130.

WHEREFORE, the Defendant, LAMBIRIS SKIRIOTES, respectively moves the Court to quash the Information filed against him in the above entitled cause for the reasons herein stated.

Respectfully submitted, Dickenson & Dickenson, by W. B. Dickenson, Attorney for Lambiris Skiriotes.

[fol. 28] IN COUNTY COURT OF PINELLAS COUNTY

[Title omitted]

ORDER DENYING MOTION TO QUASH

The above and foregoing cause coming on to be heard and being argued by the attorneys for both parties and the Court being now fully advised:

It Is Thereupon Considered, Ordered And Adjudged that the said motion to quash be and the same is hereby denied.

Dated this 26th day of January, A. D. 1940, in Chambers at St. Petersburg, Florida.

Jack E. White, Judge of said court.

[fol. 29] IN COUNTY COURT OF PINELLAS COUNTY

[Title omitted]

Transcript of Testimony and Proceedings at Trial

The above and foregoing cause coming on this 26th day of January, 1940, for trial, and the defendant, Lambiris Skiriotes, being duly arraigned on the information heretofore filed in this cause, and being required to plead thereto, enters a plea of nolo contendere, and thereupon it was stipulated and agreed by and between W. B. Dickenson and W. B. Dickenson, Jr., attorneys for the defendant, Lambiris Skiriotes, and by Lambiris Skiriotes, in person, and by

Henry S. Baynard, County Prosecuting Attorney, that a jury be waived and that the court proceed to hear and determine the cause without the intervention of a jury. Thereupon, the court proceeded to hear and determine the cause.

The attorneys for the respective parties stating to the court that there was no dispute as to the facts and having entered into a written stipulation as to what the facts are, as follows:

STIPULATION OF FACTS

It Is Hereby Stipulated And Agreed by and between Henry S. Baynard, Prosecuting Attorney for Pinellas County, Florida; and W. B. Dickenson and W. B. Dickenson, Jr., attorneys at law under the firm name and style of Dickenson & Dickenson, attorneys for the above named defend- [fol. 30] ant, Lambiris Skiriotes; and by the defendant, Lambiris Skiriotes, in pro persona, that your Honor may hear and determine the above and foregoing cause upon the agreed statement of facts in order to save the time and expense of the trial of this cause wherein there is no dispute as to the facts.

The respective parties hereby stipulate and agree that the following statement of facts is a true and correct statement in all respects as to the material facts involved in this charge of violation of the law for which the said Lambiris Skiriotes is now under prosecution.

It Is Agreed that it is true that on the 8th day of March, A. D. 1938, Lambiris Skiriotes, who is by trade and occupation a deep-sea diver engaged in sponge fishery, his resident address being at Tarpon Springs, Pinellas County, Florida, and who has been engaged in this business for the past several years, on the said 8th day of March, 1938, was arrested by Samuel Mickler, a Deputy Sheriff of Pinellas County, Florida, while engaged in using a diving suit, helmet, and all other needed and useful deep-sea diving apparatus used by deep-sea divers, and he was then and there in the act of taking from the Gulf of Mexico commerical sponges, some of which he had already taken and was diving for others at the time of his arrest.

That the place of his arrest and of his taking sponges in the manner above set forth at the time of his arrest was at a point more than one marine league and less than nine marine leagues from mean low tide on the West shore line

of the State of Florida and Southwest of Anclote Key and Northwest of Hog Island; and that the said point at which the defendant was taking sponges as aforesaid from the waters of the Gulf of Mexico was within the Gulf of Mexico [fol. 31] at a point between an extension of the Northern boundary of the said county westward into the Gulf of Mexico and an extension of the Southern boundary of Pinellas County into the Gulf of Mexico.

It Is Further Stipulated And Agreed that the said point was, according to the territorial boundaries of the State of Florida contained in the Constitution of the State of Florida of 1885, within the territorial limits of the State of Florida as fixed by the Constitution of 1885.

It Is Further true that under the treaty entered into between the United States of America and Spain and designated a treaty of amity, settlement, and limits, which was signed at Washington, D. C., February 22, 1819, ratification of the same being advised by the United States Senate February 19, 1821; same being ratified by the President February 22, 1821; same being ratified by Spain October 24, 1820; ratifications exchanged at Washington, D. C. February 22, 1821; and proclaimed by the President on February 22, 1821; the same being the treaty under which the United States acquired from Spain the State of Florida, which said treaty conveyed to the United States only the uplands of the Peninsular of Florida, together with certain islands lying adjacent thereto, this treaty not conveying any part of the waters surrounding the State of Florida below mean low tide.

It Is Agreed that it is true that the following treaties of the United States with the various countries therein named in express terms fix the international boundaries of the United States at three marine miles or one marine league measured from the low-water mark on the mainland, and [fol. 32] declare the remainder of the seas without the jurisdiction of the United States and constitute the high seas.

Treaty Series, No. 685. Convention between the United States and Great Britain—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, January 23, 1924; Ratification advised by the Senate, March 13, 1924;

Ratified by the President March 21, 1924; Ratified by Great Britain, April 30, 1924; Ratifications exchanged at Washington, May 22, 1924; Proclaimed, May 22, 1924.

Treaty Series, No. 694. Convention between the United States and Germany—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, May 19, 1924; Ratification advised by the Senate, May 26, 1924; Ratified by the President, August 9, 1924; Ratified by Germany, July 8, 1924; Ratifications exchanged at Washington, August 11, 1924; Proclaimed, August 11, 1924.

Treaty Series, No. 693. Convention between the United States and Denmark—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, May 29, 1924; Ratification advised by the Senate, June 3, 1924; Ratified by the President, July 11, 1924; Ratified by Denmark, July 8, 1924; Ratifications exchanged at Washington, July 25, 1924; Proclaimed, July 25, 1924.

Treaty Series No. 702. Convention between the United States and Italy—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, June 3, 1924; Ratification advised by the Senate, June 4, 1924; Ratified by the President, October 16, 1924; Ratified by Italy, July 7, 1924; Ratifications exchanged at Washington, October 22, 1924; Proclaimed, October 22, 1924.

Treaty Series, No. 689. Convention between the United States and Norway—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, May 24, 1924; Ratification advised by the Senate, May 31, 1924; Ratified by the President, June 20, 1924; Ratified by Norway, June 20, 1924; Ratifications exchanged at Washington, July 2, 1924; Proclaimed, July 2, 1924.

Treaty Series, No. 698. Convention between the United States and Sweden—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, May 22, 1924; Ratification advised by the Senate, May 26, 1924; Ratified by the President, August 15, 1924; Ratified by Sweden, June 13, 1924; Ratifications exchanged at Washington, August 18, 1924; Proclaimed, August 18, 1924.

Treaty Series, No. 712. Convention between the United States and the Netherlands—Prevention of Smuggling of

Intoxicating Liquors; Signed at Washington, August 21, 1924; Ratification advised by the Senate, December 10, 1924; Ratified by the President, February 26, 1925; Ratified by The Netherlands, March 31, 1925; Ratifications exchanged [fol. 33] at Washington, April 8, 1925; Proclaimed, April 8, 1925.

Treaty Series, No. 707. Convention between the United States and Panama—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, June 6, 1924; Ratification advised by the Senate, December 10, 1924; Ratified by the President, January 15, 1925; Ratified by Panama, December 30, 1924; Ratifications exchanged at Washington, January 19, 1925; Proclaimed January 19, 1925.

Treaty Series, No. 749. Convention between the United States and Spain—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, February 10, 1926; Ratification advised by the Senate, March 3, 1926; Ratified by the President, March 30, 1926; Ratified by Spain, July 20, 1926; Ratifications exchanged at Washington, November 17, 1926; Proclaimed, November 17, 1926.

Treaty Series, No. 738. Convention between the United States and Cuba—Prevention of Smuggling of Intoxicating Liquors; Signed at Habana, March 4, 1926; Ratification advised by the Senate, April 9, 1926; Ratified by the President, April 15, 1926; Ratified by Cuba, June 17, 1926; Ratifications exchanged at Habana, June 18, 1926; Proclaimed, June 19, 1926.

Treaty Series, No. 755. Convention between the United States and France—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, June 30, 1924; Ratification advised by the Senate, December 12, 1924; (Legislative Day of December 10, 1924) Ratified by the President, December 30, 1924; Ratified by France, March 1, 1924; Ratifications exchanged at Washington, March 12, 1927; Proclaimed, March 12, 1927.

Treaty Series, No. 829. Prevention of Smuggling of Intoxicating Liquors—Convention between the United States of America and Chile; Signed at Washington, May 27, 1930; Ratification advised by the Senate of the United States, June 28, 1930; Ratified by the President of the United

States, July 21, 1930; Ratified by Chile, October 2, 1930; Ratifications exchanged at Washington, November 25, 1930; Proclaimed by the President of the United States, November 26, 1930.

Treaty Series, No. 772. Convention between the United States and Greece—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, April 25, 1928; Ratification advised by the Senate May 25, 1928; (Legislative Day of May 3, 1928); Ratified by the President, June 11, 1928; Ratified by Greece, January 8, 1929; Ratifications exchanged at Washington, February 18, 1929; Proclaimed, February 18, 1929.

Treaty Series, No. 807. Convention between the United States and Japan—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, May 31, 1928; Ratification advised by the Senate, January 26, 1929; Ratified by the President, January 30, 1929: Ratified by Japan, November [fol. 34] 22, 1929; Ratifications exchanged at Washington, January 16, 1920; Proclaimed, January 16, 1930.

Treaty Series, No. 759. Convention between the United States and Belgium—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, December 9, 1925; Ratification advised by the Senate, March 3, 1926; Ratified by the President March 30, 1926; Ratified by Belgium, December 5, 1927; Ratifications exchanged at Washington, January 11, 1928; Proclaimed January 11, 1928.

Treaty Series, No. 821. Prevention of Smuggling of Intoxicating Liquors—Convention between the United States of America and Poland; Signed at Washington, June 19, 1930; Ratification advised by the Senate of the United States, June 28, 1930; Ratified by the President of the United States, July 11, 1930; Ratified by Poland, August 1, 1930; Ratifications exchanged at Warsaw, August 2, 1930; Proclaimed by the President of the United States, August 8, 1930.

Offers in Evidence

The defendant further to maintain issues in his behalf, introduced in evidence the following extracts taken from "League of Nations Conference for the Codification of International Law", Volume 2, the following diplomatic cor-

respondence by the State Department and President of the United States, as shown by the several extracts with respect to the political decisions and contentions with reference to the establishment of the international boundaries of the territorial waters of the United States.

On November 8, 1793, Mr. Jefferson, then Secretary of State, wrote a letter to the British Minister at Washington, as follows:

"The President of the United States, thinking that, before it shall be finally decided to what distance from our seashores the territorial protection of the United States shall be exercised, it will be proper to enter into friendly conferences and explanations with the Powers chiefly interested in the navigation of the seas on our coasts, and relying that [fol. 35] convenient occasions may be taken for these hereafter, finds it necessary in the meantime to fix provisionally on some distance for the present government of these questions. You are sensible that very different opinions and claims have been heretofore advanced on this subject. The greatest distance to which any respectable assent among nations has been at any time given has been the extent of the human sight estimated at upwards of twenty miles, and the smallest distance, I believe, claimed by any nation whatever, *is the utmost range of a cannon ball,* usually stated at one sea league. Some intermediate distances have also been insisted on, and that of three sea leagues has some authority in its favour. The character of our coast, remarkable in considerable parts of it for admitting no vessels of size to pass near the shores, would entitle us, in reason, to as broad a margain of protected navigation as any nation whatever. Reserving, however, the ultimate extent of this for future deliberation, the President gives instructions to the officers acting under his authority to consider those heretofore given them as restrained for the present to the distance of one sea league or three geographical miles from the seashores. This distance can admit of no opposition, as it is recognized by treaties between some of the powers with whom we are connected in commerce and navigation, and is as little, or less, than is claimed by any of them on their own coasts." 1 Moore's "Digest of International Law", page 702; League of Nations Conference for the Codification of International Law, Vol. 2, page 129.

[fol. 36] On the same date Mr. Jefferson addressed to the French Minister to the United States, a note to the same general effect. (1 American State Papers, Foreign Relations, 183).

On September 2, 1796, Mr. Pickering, Secretary of State, addressed to Lieutenant-Governor of Virginia, as follows:

"Our jurisdiction * * * has been fixed to extend three geographical miles from our shores."

1 Moore's Digest of International Law, page 704, League of Nations, Vol. 2, page 129.

On February 3rd, 1807, Mr. Madison, Secretary of State, addressed Messrs. Monroe and Pinkney, Ministers of England as follows:

"There could surely be no pretext for allowing less than a marine league from the shore, that being the narrowest allowance found in any of the authorities on the law of nations."

1 Moore's Digest — International Law, page 705. League of Nations, Vol. 2, page 129.

On December 16, 1862, Mr. Seward, Secretary of State, addressed a letter to Mr. M. Tassara, Spanish Minister, as follows:

"But it must always be a matter of uncertainty and dispute at which point the force of arms exerted on the coast can actually reach. The publicists rather advanced towards than reached a solution when they laid down the rule that the limit of the force is the range of a cannon ball. The range of a cannon ball is shorter or longer according to the circumstances of projection, and it must always be liable to change with the improvements of the science of ordinance. [fol. 37] Such uncertainty upon a point of jurisdiction or sovereignty would be productive of many and endless controversies and conflicts. A more practical limit of national jurisdiction upon the seas was indispensably necessary, and this was found, as the undersigned things, in fixing the limit at three miles from the coast. This limit was early proposed by the publicists of all maritime nations. While it is not insisted that all nations have accepted or acquiesced and bound themselves to abide by this rule when applied

to themselves, yet three points involved in the subject are insisted upon by the United States; first, that this limit has been generally recognized by nations; second, that no other general rule has been accepted; and third, that if any State has succeeded in fixing for itself a larger limit, this has been done by the exercise of maritime power, and constitutes an exception to the general understanding which fixes the range of a cannon-shot (when it is made the test of jurisdiction) at three miles. So generally is this rule accepted that writers commonly use the two expressions, of a range of cannon-shot and three miles, as equivalents of each other."

1 Moore's "Digest of International Law", pages 706, 707; League of Nations, Vol. 2, pages 129 and 130.

On May 28, 1886, Mr. Bayard, Secretary of State, wrote Mr. Manning, Secretary of the Treasury, a letter in which he said:

"The position of this department has uniformly been that the sovereignty of the shore does not, so far as territorial authority is concerned, extend beyond three miles from low-water mark, etc."

[fol. 38] 1 Wharton's Digest of International Law, page 107; 1 Moore's Digest of International Law, page 720; League of Nations, Vol. 2, page 130.

On July 3, 1902, Mr. Herbert H. D. Pierce, Agent of the United States in the C. H. White case, Russian arbitration, in reply to the question asked by Mr. T. M. C. Asser, arbitrator, said:

"The Government of the United States claims, neither in Bering Sea nor in its other bordering waters, an extent of jurisdiction greater than a marine league from its shores, etc."

U. S. Foreign Relations 1902, Appendix 1, pages 440, 461; League of Nations Conference for the Codification of International Law, Vol. 2, page 130.

On January 23, 1904, in an address of Mr. Chief Justice Charles E. Hughes, of the Supreme Court of the United States, then Secretary of State, reprinted in 18 Am. Journal of International Law, pages 229-231, inclusive, said:

"The Government of the United States has repeatedly asserted that the limits of territorial waters extend to three marine miles outward from the coast-line. This has been asserted by our Government in making claims upon other Governments • • •

"It is quite apparent that this Government is not in a position to maintain that its territorial waters extend beyond the three mile limit."

League of Nations Conference for the Codification of International Law, Vol. 2, page 130.

After argument of Counsel, the Court reserved his findings and judgment.

[fol. 39] Which was all the testimony and proceedings had and taken on said date.

I Hereby Certify the above is a true and correct transcript of the proceedings had before me in the above entitled cause, in Chambers, in St. Petersburg, Pinellas County, Florida, on the 26th day of January, A. D. 1940. Jack F. White, County Judge.

IN COUNTY COURT OF PINELLAS COUNTY

[Title omitted]

PLEA OF DEFENDANT

The defendant, Lambiris Skiriotes, waived arraignment in open Court and enters a pleas of 'Nolle Contendre' to the charges contained in the above information.

[fols. 40-45] Agreed statement of facts omitted. Printed side page, 29 ante.

[fol. 46] IN COUNTY COURT OF PINELLAS COUNTY

[Title omitted]

JUDGMENT

The testimony in said cause having been concluded and argument by counsel representing both parties being presented to the Court; and the Court now being fully advised in the premises, finds you, Lambiris Skiriotes, guilty as charged in the Information, and it is the judgment of the Court that you are guilty of the charge as made against you in the Information filed in this cause.

The Court reserves the right to pass sentence after the presenting and arguing of Motion for New Trial and Motion in Arrest of Judgment.

Done and ordered in Open Court at Clearwater, Pinellas County, Florida, this 27th day of January, A. D. 1940.

Jack F. White, Judge of the Said Court.

[fol. 47] IN COUNTY COURT OF PINELLAS COUNTY

[Title omitted]

MOTION TO SET ASIDE JUDGMENT, ETC.

To the Honorable Jack F. White, Judge of the above styled Court:

Comes now the above named defendant, Lambiris Skiriotes, by his attorneys, W. B. Dickenson, and W. B. Dickenson, Jr., and within four days after the verdict and judgment of conviction was entered in said cause, and before sentence was pronounced upon the defendant, and respectfully moves the Court to set aside the verdict and judgment of conviction in the above cause and grant to the defendant a new trial upon the following grounds, to-wit:

First. Because the Information filed against the defendant charges the alleged offense to have been committed on the high seas beyond and outside of the jurisdiction of the Court.

Second. Because the evidence clearly and conclusively establishes without controversy that the alleged offense with which this defendant was charged and convicted, if committed at all, was committed on the high seas beyond the territorial limits of Pinellas County, Florida, and beyond and outside of the jurisdiction of this Court.

Third. Because the evidence conclusively and without controversy shows that the alleged offense charged in the [fol. 48] Information and of which this defendant was convicted, if committed at all, was committed on the high seas outside of and beyond the jurisdiction of the courts of the State of Florida.

Respectfully submitted, W. B. Dickenson, W. B. Dickenson, Jr., Attorneys for Defendant.

IN COUNTY COURT OF PINELLAS COUNTY

[Title omitted]

MOTION IN ARREST OF JUDGMENT

To the Honorable Jack F. White, Judge of the above styled Court:

Comes now the above named defendant, Lambiris Skiriotes, by his attorneys, W. B. Dickenson, and W. B. Dickenson, Jr., and respectfully shows unto Your Honor that he was on the 26th day of January, 1940, in this Honorable Court convicted under an Information heretofore filed in this cause, of a violation of Section 8087, Compiled General Laws of Florida, adopted in 1927, prohibiting the use of diving apparatus in taking sponge from the territorial waters of the State of Florida; that this motion was filed within four days of the rendition of the verdict and judgment of conviction and before sentence was passed upon this defendant in this cause; and moves the Court to Arrest the Judgment in this cause upon the following grounds, to-wit:

First. Because the Information filed against the defend- [fol. 49] ant charges the alleged offense to have been com-

mitted on the high seas beyond and outside of the jurisdiction of the Court.

Second. Because the evidence clearly and conclusively establishes without controversy that the alleged offense with which this defendant was charged and convicted, if committed at all, was committed on the high seas beyond the territorial limits of Pinellas County, Florida, and beyond and outside of the jurisdiction of this Court.

Third. Because the evidence conclusively and without controversy shows that the alleged offense charged in the Information and of which this defendant was convicted, if committed at all, was committed on the high seas outside of and beyond the jurisdiction of the courts of the State of Florida.

Fourth. Because the Information as framed clearly shows that the offense alleged therein against this defendant and of which he was convicted, if committed at all, was committed on the high seas outside of and beyond the territorial limits of the United States of America, of the State of Florida, and of the County of Pinellas; and therefore, this Court has no Jurisdiction of the alleged offense charged in the Information.

Fifth. Because the Information charges no crime or offense to have happened within the jurisdiction of this Honorable Court.

Sixth. Because this Court is wholly without jurisdiction to hear, try, and determine this cause.

Respectfully submitted, W. B. Dickenson, W. B. Dickenson, Jr., Attorneys for Defendant.

[fol. 50] IN COUNTY COURT OF PINELLAS COUNTY

[Title omitted]

ORDER DENYING MOTION FOR NEW TRIAL, ETC.

The above and foregoing cause coming on to be heard this day before me on Motion for New Trial filed by the defendant, Lambiris Skiriotes, and also upon Motion in

Arrest of Judgment filed by the defendant, Lambiris Skiriotes, and the Court having heard argument of counsel for both parties, and being now fully advised in the premises:

It is Thereupon Ordered and Adjudged that the said Motion for New Trial filed in this cause by the said defendant, be, and the same is hereby denied.

It is Further Ordered and Adjudged that the Motion in Arrest of Judgment filed by the said Defendant in this cause, be, and the same is hereby denied.

Done and Ordered in Open Court at Clearwater, Pinellas County, Florida, this 27th day of January, A. D. 1940.

Jack F. White, Judge of the said Court.

IN COUNTY COURT OF PINELLAS COUNTY

STATE OF FLORIDA

VS.

LAMBIRIS SKIRIOTES

Violation of Sec. 8087 C. G. L. of Florida prohibiting the use of diving apparatus in taking sponge

JUDGMENT AND SENTENCE

The defendant, Lambiris Skiriotes, upon being caused to stand before the bar in custody of the Sheriff, was asked by the Court if he had anything to say why the sentence of the law should not now be pronounced upon him, and he [fol. 51] answering nothing in bar or preclusion thereof, the Judge pronounced the following sentence, to-wit:

"You, Lambiris Skiriotes, having entered a plea of Nolle Contendre to the charges of violation of Section 8087 of the Compiled General Laws of Florida prohibiting the use of diving apparatus in taking sponge, the Court adjudges you to be guilty.

It is therefore the sentence of the law and the judgment and order of this Court that you, Lambiris Skiriotes, for your said offense for which you now stand convicted shall serve two (2) days in the County Jail of Pinellas County, Florida. It is further considered and ordered that you,

Lambiris Skiriotes, shall also pay a fine of Fifty ($50.00) Dollars.

Thereupon the defendant was remanded to the custody of the Sheriff."

IN COUNTY COURT OF PINELLAS COUNTY

[Title omitted]

MOTION FOR ORDER OF SUPERSEDEAS

To the Honorable Jack F. White, Judge of the said Court:

Comes now the above named defendant, Lambiris Skiriotes, by his attorneys, Dickenson & Dickenson, and after his conviction and sentence respectfully shows unto the Court that he is immediately suing out a writ of error to the Circuit Court in the above entitled cause and respectfully moves the Court for an order directing that the suing out of the writ of error do operate as supersedeas pending [fol. 52] the final result of the appeal, and also fixing the amount, terms and conditions of the supersedeas bond to be given by the Defendant, upon which he may be released upon appeal. In this connection the Defendant respectfully shows unto the Court that he has heretofore been released on his own recognizance and has always appeared whenever necessary and will do so in the future if Your Honor will release him upon his own personal bond or accept his recognizance pending the result of the appeal.

Respectfully submitted, Dickenson & Dickenson, by W. B. Dickenson, Attorneys for Defendant.

IN COUNTY COURT OF PINELLAS COUNTY

[Title omitted]

SUPERSEDEAS ORDER

The above and foregoing cause coming on to be heard before me on application of the Defendant for an Order directing that the suing out of the writ of error shall operate as supersedeas, and further applying for an Order

fixing the amount, terms and conditions of the supersedeas bond to be given by the Defendant; and it appearing to the Court that the Defendant has been released on his own recognizance and has not failed to appear when called upon; and the Court having every confidence that he will appear if needed in the future; It is Hereby Ordered,

That the suing out of the writ of error within thirty (30) [fol. 53] days from this date shall operate as supersedeas in all respects in this cause; and

It is further ordered that the Defendant be released on his own recognizance pending the result of appeal.

Done and Ordered in Open Court at St. Petersburg, Pinellas County, Florida, this 27th day of January, A. D. 1940.

Jack F. White, Judge of the Said Court.

IN COUNTY COURT OF PINELLAS COUNTY

[Title omitted]

GROUNDS OF APPEAL

Comes now the above named Appellant, Lambiris Skiriotes, by his attorneys, Dickenson & Dickenson, and within sixty (60) days after the filing of Notice of Appeal files the following grounds of appeal.

The Appellant appeals from the final judgment of conviction heretofore entered in this cause by the Court against this Appellant.

The Appellant also appeals from the sentence imposed upon him by the Honorable Jack F. White, judge of the said Court in this cause.

The Appellant assigns the following grounds of appeal from the said judgment and sentence:

1. The Court erred in over-ruling and denying the defendant's Motion to Quash the Information filed against him in this cause.

2. The Court erred in holding and determining that the jurisdiction of the Criminal Courts of the State of Florida

extends westward from mean low tide on the mainland and adjacent islands of the State of Florida a distance of three [fol. 54] marine leagues or nine nautical miles.

3. The Court erred in holding that the boundaries of the State of Florida, as fixed by the Constitution of Florida of 1885, extending three marine leagues West from mean low tide on the West Coast of Florida, did not violate Section One of Article 14 of the Constitution of the United States of America, originally adopted as the Fourteenth Amendment to the Constitution of the United States of Ameriea.

4. The Court erred in holding and determining that the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida of 1885, were not violative of Article 6 of the Constitution of the United States of America.

5. The Court erred in holding that the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida of 1885, were valid and not in violation of Article 2, Section 2, Clause 2, of the Constitution of the United States of America.

6. The Court erred in holding that the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida of 1885, were valid and enforceable and not in violation of Article One, Section 10, Paragraph One of the Constitution of the United States of America.

7. The Court erred in holding that the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida of 1885, were valid and not in violation of Article One, Section 10, Paragraph 3 of the Constitution of the United States of America.

8. The Court erred in holding that the law of the State of Florida under which the Information was filed against [fol. 55] the defendant in this cause, and which law is based upon the boundaries of the State of Florida as established by the Constitution of the State of Florida of 1885, was not in violation of the various treaties made and entered into by the United States of America, each of which is specifically set forth in the Motion to Quash the Indictment, and each of which said treaties was made pursuant to the authority granted by the Constitution of the United

States of America and were valid and binding on the United States of America and each and every state of the United States, including the State of Florida.

9. The Court erred in holding that the law under which the Information in this cause was filed against this defendant and which said law is based upon and of necessity relies upon the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida of 1885, is valid and not in violation of the decisions of the Political and Executive Departments of the Federal Government as to what is and constitutes the extreme limits of the territorial boundaries of the United States of America, as will be more fully shown by reference to the Seventh Ground of the Motion to Quash the Information, the same being made a part of this Assignment of Errors as fully as though set out herein in haec verba.

10. The Court erred in holding and determining under the evidence in this cause submitted to the Court in an agreed statement of facts, the same being filed in this cause, that the alleged offense charged in the Information against the defendant under the agreed statement of facts occurred, was committed, done and performed within the territorial jurisdiction of the Criminal Courts of the State of Florida.

[fols. 56-57] 11. The Court erred, under the facts shown by this record, in holding and determining that this Court had jurisdiction to try and determine the charge in the Information.

12. The Court erred in his determination and holding that the territorial limits of the State of Florida extend westward from mean low tide on the shore line of the State of Florida and adjacent islands thereto a distance of three marine leagues into the Gulf of Mexico.

13. The Court erred in its order over-ruling and denying the Motion for a New Trial upon each of the grounds therein set forth.

14. The Court erred in his order over-ruling and denying the defendant's Motion in Arrest of Judgment and each of the grounds set forth in the said Motion.

Respectfully submitted, Dickenson & Dickenson, by W. B. Dickenson, Jr., Attorneys for Defendant.

Service of a copy of the above and foregoing Grounds of Appeal is hereby acknowledged and all other notice is hereby waived.

Chester B. McMullen, State Attorney.

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 58] I hereby acknowledge receipt of a carbon copy of the above and foregoing Certified Copy of Appeal Papers and proceedings in the said cause, this 27th day of March, A.D. 1940.

Chester B. McMullen, State Attorney.

[fol. 59] In Supreme Court of Florida, June Term, A. D. 1940, En Banc

Pinellas County

Lambiris Skiriotes, Petitioner,

vs.

The State of Florida, Respondent

Certiorari to Circuit Court, Pinellas County, John U. Bird, Judge. W. B. Dickenson, Dickenson & Dickenson, for Petitioner; George Couper Gibbs, Attorney General, William Fisher, Jr., Assistant Attorney General, for Respondent.

Opinion—Filed September 6, 1940

Terrell, C. J.:

Lambiris Skiriotes was tried and convicted in the County Court of Pinellas County for using diving apparatus in the taking of sponge from the Gulf of Mexico contrary to Section 8087, Compiled General Laws of 1927. His conviction was on appeal affirmed by the Circuit Court so he petitions this Court to review it by certiorari.

Three questions are urged for determination but all turn

on that of whether the provisions of the Constitution of 1885 fixing the western boundary of Florida at three marine leagues (nine nautical miles) from the shore is violative of the Constitution of the United States, including treaties and executive orders made pursuant to the Federal Constitution.

There is no dispute about the facts. It is admitted that the alleged offense was committed within the State if the [fol. 60] boundary as fixed by the Constitution of 1885 is controlling. The case was tried by the Court on waiver of jury and stipulation as to material facts. Petitioner contends that the marine boundary of the State is fixed by international law at one marine league from shore and that the offense was committed beyond this limit.

By the tenth amendment to the Federal Constitution the States reserved all rights and powers which they did not in terms surrender to the United States. In Manchester vs. Massachusetts, 139 U. S. 240, 11 Sup. Ct. 559, 35 L. Ed. 159, the Supreme Court approved the doctrine that a State may determine its own marine boundaries provided it does not exceed the limits recognized by the law of nations. For the purpose of fixing marine boundaries in this country, the states may be considered as nations. As a practical matter, the marine boundary of a State may be fixed by the latter with the approval of Congress and may not be limited to one marine league.

At the time of the Revolution, each state was an independent nation and determined its marine boundary. Such was the practice of each state subsequently admitted to the Union. In the absence of affirmative action on this point the Supreme Court of the United States has generally assumed the sovereignty of the state to extend one marine league from shore. This distance was fixed because it was at the time considered to be the range of a cannon shot and that the state should be permitted to protect that distance from its shore. This distance has in many instances been increased within reason and we find nothing in the law of nations to forbid it.

The western boundary of Florida was fixed at three marine leagues from the main land by the Constitution of 1868. In June of the same year but after the adoption of the Constitution, Congress passed an act admitting Florida and other southern states to the Union, the said act making

[fol. 61] reference to the Constitution of 1868. The Constitution of 1885 repeated the boundary defined in the Constitution of 1868 and the latter has continued to be the boundary to the present.

The petitioner contends that the act of Congress readmitting Florida to the Union did not constitute an approval of the boundary but that if it did, such approval was subsequently withdrawn by treaties entered into between the United States and certain foreign countries including executive orders made by the President and the Cabinet, all of which referred to the boundary of the United States as three marine leagues from the mainland.

It is true that by international law, one marine league is generally considered the distance over which a nation has exclusive jurisdiction and such waters are considered as under the jurisdiction of the sovereign but it has never been determined that such limits were final. Treaties and legislative acts passed pursuant to the Constitution are clothed with equal dignity and by the Constitution are made the Supreme Law of the land. This of course presupposes that they relate to the same subject. The State of Florida was not a party to any of the treaties or executive orders relied on by petitioner and none of them has any reference to the boundary of Florida. Such as they did connote it was one marine league from shore.

Petitioner also contends that if Florida can extend its boundaries to three marine leagues from shore, then there is no limit to the extent they may be extended. The answer to this question is that such extensions must be approved by Congress and when done, its approval is final. We do not infer that any extension would be approved by Congress. Certainly no unreasonable extension or one that would transcend international law would be approved. In Jones vs. United States, 137 U. S, 202, 11 Sup. Ct. 80, [fol. 62] 34 L. Ed. 691, the Supreme Court held that the question of who is the sovereign de jure or de facto is a political rather than a judicial question. The Courts are bound by the legislative determination of such questions.

In support of this position it may be pointed out that the boundaries of the sister states of Alabama, Mississippi, Louisiana, and Texas were fixed by their respective legislatures at the time of admission, some at three marine

leagues from the shore, some at six and Louisiana at nine, yet all said boundaries were approved by acts of Congress in similar manner as that approving the boundary of Florida and some of them have been on the books more than one hundred years. A complete discussion of the boundary of Louisiana and Mississippi is found in Louisiana vs. Mississippi, 202 U. S. 1, 26 Sup. Ct. 408, 50 L. Ed. 913.

Both parties to this cause rely on Manchester v. Massachusetts, and Louisiana vs. Mississippi, supra, to support their contention. The direct question presented here was not raised in either one of those cases. In the former case the Court held that as between nations, the minimum limit of the territorial jurisdiction of a nation over tide waters is a marine league from the coast and that a State may define its marine boundaries within these limits.

In the latter case, it was held that as between states long acquiescence in the assertion of a particular boundary and the exercise of sovereignty over the territory within it should be accepted as conclusive whatever the international rule may be in respect of acquisition by prescription of large tracts of country claimed by two states.

Since one marine league is considered by this line of [fol. 63] cases as the "minimum" width of the marine belt and no maximum is prescribed all of the states referred to have gone on the theory that circumstances warranted a widening of their marine belt and have done so but in keeping with and to the extent that the range of artillery has been lengthened. If the range of a cannon shot controlled the width of the marine belt in the first instance, certainly it may be widened with length of the range. This procedure has been long acquiesced in, was approved by Congress and is not prohibited by the Constitution. We are not convinced that it should be disturbed on the showing made.

From the decided cases, it appears that any state by approval of Congress has a right to fix its marine boundaries and that if fixed in reason, such right has never been questioned by Congress, by any other nation or citizen thereof. Long acquiesence in a boundary so fixed concludes the question. Indiana v. Kentucky, 136 U. S. 479, 10 Sup. Ct. 1051, 34 L. Ed. 329; Maryland v. West Virginia,

217 U. S. 1, 30 Sup. Ct. 268, 54 L. Ed. 645; Pope v. Blanton, 10 Fed. Supp. 18; Linscomb v. Gialourakis, 101 Fla. 1130, 133 So. 104; Cunningham v. Skiriotes, 101 Fed. (2d) 635.

It follows that the western boundary of Florida as defined in its Constitution at three marine leagues from shore is conclusive and being so by the agreed statement of facts, petitioner was guilty of violating Section 8087, Compiled General Laws of 1927, so the writ of certiorari is denied.

It is so ordered.

Whitfield, Brown, Buford, Chapman and Thomas J.J., concur.

[fol. 64] IN SUPREME COURT OF FLORIDA

[Title omitted]

PETITION FOR APPEAL

To the Honorable Justices of the said Court:

Comes now Lambiris Skiriotes, the above named plaintiff-in-error, by his attorneys, Dickenson & Dickenson, and files this, his petition for appeal of said cause from that certain final decision of this Honorable Court made and entered on September 6, 1940, and in which the mandate was transmitted to the Circuit Court on September 23, 1940, and which mandate the petitioner petitions this Court to recall for the purpose of passing upon his petition for appeal.

Your petitioner would further respectfully show Your Honors that prior to the Act of Congress of January 31, 1928, being Chapter 14, 45 Stat. 54, he was under the provisions of the Act of Congress of February 13, 1925, being Chapter 229, 43 Stat. 936, entitled to a writ of error, under the provisions of Section 237, Paragraph A, in the Supreme Court of the United States, in this cause; said section and [fol. 65] paragraph providing:

"A final judgment and decree in any suit in the highest court of the state in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity, or where is drawn in question the validity of

a statute of any state, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court, upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify or affirm the judgment or decree of such state court, and may, in its discretion, award execution or remand the cause to the court in which it was removed by the writ."

The Act of Congress of January 31, 1928, being Chapter 14, 45 Stat. 54, provides in Section One:

"That the writ of error in cases, civil and criminal, is abolished. All relief which heretofore could be obtained by writ of error shall hereafter by obtainable by appeal."

The Act of Congress of April 26, 1928, being Chapter 440, 45 Stat. 466, Section 2, provides:

"That the Statute regulating the right to writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and invoking such relief, including the provisions relating to costs, supersedeas and mandate shall be applicable to the appeal which the preceding section substitutes for a writ of error."

[fol. 66] Your petitioner, Lambiris Skiriotes, further shows Your Honors that on January 20, 1940, Henry S. Baynard, Prosecuting Attorney for the County of Pinellas, State of Florida, filed an information in the County Court of Pinellas County, Florida, charging that Lambiris Skiriotes on the 8th day of March, 1938, knowingly, willfully and unlawfully maintained and used for the purpose of catching or taking commercial sponges from the Gulf of Mexico within the territorial limits of the State of Florida, to wit, at a point more than one marine league from mean low tide on the West shore line of the State of Florida and southwest of Anclote Key and northwest of Hog Island and within three marine leagues of mean low tide on the West shore line of the State of Florida at a point approximately two marine leagues from mean low tide on the West shore line of the State of Florida and within the territorial limits of the County of Pinellas, a diving suit,

helmet, and other apparatus used by deep-sea divers, and did then and there catch or take commercial sponges from the Gulf of Mexico in violation of the provisions of Section 4 of Chapter 7389, Laws of Florida, enacted in 1917, and re-enacted as Section 8087, Compiled General Laws of Florida, adopted in 1927.

The said Lambiris Skiriotes filed his motion to quash the information and for grounds of the motion set forth that the statute under which the information was filed was [fols. 67-71] in violation of the provisions of the Constitution of the United States of America, particularly Section One, Article 14, originally adopted as the Fourteenth Amendment to the Constitution of the United States.

That the said Act of the Legislature of Florida was also invalid because it was in violation of the provisions of Article 6 of the Constitution of the United States.

That the said law was invalid because it was in violation of Article 2, Section 2, Clause 2, of the Constitution of the United States.

That the law was invalid because it was in violation of Article One, Section 10, Paragraph One of the Constitution of the United States.

That the law was invalid because it was in violation of Article One, Section 10, Paragraph 3 of the Constitution of the United States.

That the law was invalid because it was in violation of the treaty provisions of the United States of America in respect to the following treaties:

(List of treaties omitted. Printed side page. 22 ante.)

[fol. 72] That the law was invalid because it violates the decisions of the political and executive departments of the Federal Government on the question of what is and constitutes the extreme limits of the territorial boundaries of the United States of America, as shown by the report of the 1929 Conference at Geneva of the League of Nations, issued by the Publications department of the League of Nations "Conference for the Codification of International Law" Tome II.—Eaux Territoriales, as follows:

[fol. 73] "Also, on November 8, 1793, Mr. Jefferson, then Secretary of State, wrote a letter to the British Minister at

Washington, in which he said that the President had instructed him to say that officers acting under his authority to consider those heretofore given them as restrained for the present to the distance of one sea league or three geographical miles from the seashores. 1 Moore's Digest of International Law, page 702; League of Nations Conference for the Codification of International Law, Vol. 2, page 129.

On the same date Mr. Jefferson addressed to the French Minister to the United States, a note to the same effect. (1 American State Papers, Foreign Relations, 183.)

On September 2, 1796, Mr. Pickering, Secretary of State, addressed to Lieutenant-Governor of Virginia, as follows:

'Our jurisdiction * * * has been fixed to extend three geographical miles from our shores.'

1 Moore's Digest of International Law, page 704, League of Nations, Vol. 2, page 129.

On February 3rd, 1807, Mr. Madison, Secretary of State, addressed Messrs. Monroe and Pinkney, Ministers to England, as follows:

[fol. 74] 'There could surely be no pretext for allowing less than a marine league from the shore, that being the narrowest allowance found in any of the authorities on the law of nations.'

1 Moore's Digest International Law, page 705, League of Nations, Vol. 2, page 129.

On December 16, 1862, Mr. Seward, Secretary of State, addressed a letter to Mr. M. Tassara, Spanish Minister, stating that the United States' territory extended one marine league or three miles from the coast line. (1 Moore's Digest of International Law, page 706-707; League of Nations Conference for the Codification of International Law, Vol. 2, page 129-130.)

On May 28, 1886, Mr. Bayard, Secretary of State, wrote Mr. Manning, Secretary of the Treasury, in which he said:

'The position of this department has uniformly been that the sovereignty of the shore does not, so far as territorial authority is concerned, extend beyond three miles from low-water mark, etc.

1 Wharton's Digest of International Law, page 107; 1 Moore's Digest of International Law, page 720, League of Nations, Vol. 2, page 130.

On July 3, 1902, Mr. Herbert H. D. Pierce, Agent of the United States in the C. H. White case, Russian arbitration, in reply to the question asked by Mr. T. M. C. Asser, arbitrator, said:

'The Government of the United States claims, neither in Bering Sea nor in its other bordering waters, an extent of jurisdiction greater than a marine league from its shores, etc.'

U. S. Foreign Relations 1902, Appendix 1, pages 440, 461; League of Nations Conference for the Codification of International Law, Vol. 2, page 130.

[fol. 75] On January 23, 1904, in an address of Mr. Chief Justice Charles E. Hughes, of the Supreme Court of the United States, then Secretary of State, reprinted in 18 Am. Journal of International Law, pages 229-230-231, said:

'The Government of the United States has repeatedly asserted that the limits of territorial waters extend to three marine miles outward from the coast-line. This has been asserted by our Government in making claims upon other Governments . . .

'It is quite apparent that this Government is not in a position to maintain that its territorial waters extend beyond the three mile limit.'

League of Nations Conference for the Codification of International Law, Vol. 2, page 130.''

[fol. 76] The trial court overruled and denied the aforesaid motion, and upon the trial of the issues in said cause found, notwithstanding the evidence shows, that the offense, if committed at all, was committed two marine leagues from the nearest point of land of the State of Florida and the islands adjacent thereto in the Gulf of Mexico, and outside of the international boundary, as fixed by the treaty provisions and by the political decisions and opinions of the United States of America, and fined and imprisoned the defendant.

Upon appeal to the Circuit Court of the Sixth Judicial Circuit of Florida, in and for Pinellas County, Florida, the Circuit Court affirmed the judgment and decisions of the trial court in a written opinion entered in said cause on April 30, 1940. Thereupon, the defendant, Lambiris Skiriotes, applied to this Honorable Court for a Writ of Certiorari setting up and assigning all the errors which had been preserved throughout the proceedings in this cause, and this Honorable Court on the 6th day of September, 1940, filed its opinion and judgment in said cause, and on the 23rd day of September, 1940, filed its mandate in the said Circuit Court of the Sixth Judicial Circuit of Florida, in and for Pinellas County.

This defendant further shows unto Your Honors that neither under the provisions of Chapter 7389, Laws of Florida enacted by the Legislature of 1917, nor under the [fol. 77] provisions of Section 8087, or any other section of the Compiled General Laws of Florida, adopted in 1927, nor under the provisions of any other statute of the State of Florida applicable to the crime charged against this applicant, Lambiris Skiriotes, are the boundaries of the State of Florida, or what constitutes the territorial waters of the State of Florida defined. Therefore, it is necessary to refer to the Constitution of the State of Florida of 1885. Article One of the Constitution of the State of Florida defines the boundaries of the State of Florida in the following language:

"The boundaries of the State of Florida shall be as follows. Commencing at the mouth of the river Perdido; from thence up the middle of said river to where it intersects the south boundary line of the State of Alabama, and the thirty-first degree of north latitude; thence due east to the Chattahoochee River; thence down the middle of said river to its confluence with the Flint River; thence straight to the head of the St. Mary's River; thence down the middle of said river to the Atlantic Ocean; thence southeastwardly along the coast to the edge of the Gulf Stream; thence southwestwardly along the edge of the Gulf Stream and Florida Reefs to, and including the Tortugas Islands; thence northeastwardly to a point three leagues from the mainland; thence northwestwardly three leagues from the land to a

point west of the mouth of the Perdido River; thence to the place of beginning."

[fol. 78] It is therefore fully made to appear to this Honorable Court by the above allegations and excerpts from the record in this cause that the petitioner is entitled to have the said cause reviewed under the provisions of Paragraph 2 of Rule 46 of the Revised Rules of the Supreme Court of the United States and under the applicable statutes of the United States above referred to.

Your petitioner also files herewith his Assignments of Error as required by Rule 9 of the Revised Rules of the Supreme Court of the United States.

Your petitioner also files herewith his statement as to the jurisdiction of the Supreme Court, as required by Rule 12 of the Revised Rules of the Supreme Court of the United States.

Your petitioner respectfully requests the Court to make and enter an order fixing the amount, terms and conditions of a bond providing ample security for costs that may be incurred in the cause as required by paragraph 2 of Rule 46 of the Revised Rules of the Supreme Court of the United States, and also paragraph One of Rule 36 of the Revised Rules of the Supreme Court of the United States.

Your petitioner further requests the Court to assign and issue the requisite citation to the appellee, The State of Florida, as required by paragraph 2 of Rule 46, and also paragraph One of Rule 10 of the Revised Rules of the Supreme Court of the United States.

[fol. 79] Your petitioner further requests the Court to fix the amount, terms and conditions of supersedeas bond to be furnished by your petitioner as required under paragraph 2 or Rule 36 of the Revised Rules of the Supreme Court of the United States.

The applicant calls the Court's attention to the time within which appeals may be allowed, to Section 350 of United States Code Annotated, Title 28, Judicial Code and Judiciary, which carries forward Paragraph 1008 of Revised Statutes, March 3, 1891, c.517, Paragraph 6, 26 Stat. 828; also Act of Congress, September 6, 1916, c.448, Paragraph 6, 39 Stat. 727; also Act of Congress, February 13, 1925, c.229, Paragraph 8, (a, b) 43 Stat. 940, under which statutes the time within which appeals may be allowed is fixed at "within

three (3) months after the entry of such judgment or decree." It is, therefore, apparent that this application is made within the time allowed.

The applicant respectfully applies to this Court for the above mentioned orders and an order allowing and permitting the appeal to the Supreme Court of the United States from the said final judgment and order of this Court entered on September 6, 1940.

Respectfully submitted,

Lambiris Skiriotes, Petitioner. Dickenson & Dickenson, By W. B. Dickenson, Attorneys for Petitioner.

[fol. 80] Service of a copy of the above and foregoing Petition for Appeal for and on behalf of the State of Florida is hereby acknowledged this 19th day of November, A. D. 1940.

George Cooper Gibbs, Attorney General of the State of Florida, acting for and on behalf of the State of Florida. By Wm. Fisher, Jr., Assistant Attorney General.

[fol. 81] IN SUPREME COURT OF FLORIDA

[Title omitted]

ASSIGNMENTS OF ERROR

Comes now the above named Appellant, by his undersigned attorneys and respectfully shows unto the Court in support of his application for appeal that the Supreme Court of Florida, in entering in its opinion and judgment on September 6, 1940, a copy of which opinion and judgment is hereto attached and marked Exhibit "A", erred in the following particulars, and assigns each of the following as his assignments of error on appeal:

I

The Court erred in sustaining the Circuit Court of Pinellas County, Florida, sitting as the first appellate court, in overruling and denying the defendant's (appellant's) motion to quash the information filed against him in this cause.

[fol. 82]

II

The Court erred in denying the Appellant's application for certiorari and thereby holding and determining that the jurisdiction of the criminal courts of the State of Florida extends westward from mean low tide on the mainland and adjacent islands of the State of Florida a distance of three marine leagues or nine nautical miles.

III

The Court erred in holding that the boundaries of the State of Florida, as fixed by the Constitution of Florida of 1885, extending three marine leagues westward from mean low tide on the West coast of Florida into the Gulf of Mexico, did not violate Section One of Article 14 of the Constitution of the United States of America, originally adopted as the 14th Amendment to the Constitution of the United States of America.

IV

The Court erred in holding and determining that the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida of 1885, were not violative of Article 6 of the Constitution of the United States of America.

V

The Court erred in holding that the boundaries of the State of Florida, as fixed by the Constitution of the State [fol. 83] of Florida of 1885, were valid and not in violation of Article 2, Section 2, Clause 2 of the Constitution of the United States of America.

VI

The Court erred in holding that the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida of 1885, were valid and enforceable and not in violation of Article One, Section 10, Paragraph One of the Constitution of the United States of America.

VII

The Court erred in holding that the boundaries of the State of Florida, as fixed by the Constitution of the State

of Florida of 1885, were valid and not in violation of Article One, Section 10, Paragraph 3 of the Constitution of the United States of America.

VIII

The Court erred in holding that the law of the State of Florida under which the Information was filed against the defendant in this cause, and which law was based upon the boundaries of the State of Florida as established by the Constitution of the State of Florida of 1885, is not in violation of the various treaties made and entered into by the United States of America, each of which treaties is specifically set forth in the Motion to Quash the Indictment and are the following treaties, to-wit:

[fols. 84-86] List of treaties omitted. Printed side page. 22 ante.

[fol. 87] IX

The Court erred in holding that the law under which the Information in this cause was filed against this defendant (appellant), and which said law is based upon and of necessity relies upon the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida of 1885, is valid and not in violation of the decisions of the political and executive departments of the Federal government as to what is and constitutes the extreme limits of the territorial boundaries of the United States of America, as shown by the official report of the 1929 Conference at Geneva of [fol. 88] the League of Nations, issued by the Publications Department of the League of Nations "Conference for the Codification of International Law" Tome II.—Eaux Territoriales, setting forth the following matters and things showing the political and executive rulings from November 8, 1793 to January 23, 1924, as follows:

"Also, on November 8, 1793, Mr. Jefferson, then Secretary of State, wrote a letter to the British Minister at Washington, in which he said that the President had instructed him to say that officers acting under his authority

to consider those heretofore given them as restrained for the present to the distance of one sea league or three geographical miles from the seashores. 1 Moore's Digest of International Law, page 702; League of Nations Conference for the Codification of International Law, Vol. 2, page 129.

On the same date Mr. Jefferson addressed to the French Minister to the United States, a note to the same effect. (1 American State Papers, Foreign Relations, 183.)

On September 2, 1796, Mr. Pickering, Secretary of State, addressed to Lieutenant-Governor of Virginia, as follows:

'Our jurisdiction * * * has been fixed to extend three geographical miles from our shores.'

1 Moore's Digest of International Law, page 704, League of Nations, Vol. 2, page 129.

On February 3rd, 1807, Mr. Madison, Secretary of State, addressed Messrs. Monroe and Pinkney, Ministers to England, as follows:

[fol. 89] 'There could surely be no pretext for allowing less than a marine league from the shore, that being the narrowest allowance found in any of the authorities on the law of nations.'

1 Moore's Digest International Law, page 705, League of Nations, Vol. 2, page 129.

On December 16, 1862, Mr. Seward, Secretary of State, addressed a letter to Mr. M. Tassara, Spanish Minister, stating that the United States' territory extended one marine league or three miles from the coast line. (1 Moore's Digest of International Law, page 706-707; League of Nations Conference for the Codification of International Law, Vol. 2, page 129-130.)

On May 28, 1886, Mr. Bayard, Secretary of State, wrote Mr. Manning, Secretary of the Treasury, in which he said:

'The position of this department has uniformly been that the sovereignty of the shore does not, so far as territorial authority is concerned, extend beyond three miles from low-water mark, etc.'

1 Wharton's Digest of International Law, page 107; 1 Moore's Digest of International Law, page 720, League of Nations, Vol. 2, page 130.

On July 3, 1902, Mr. Herbert H. D. Pierce, Agent of the United States in the C. H. White case, Russian arbitration, in reply to the question asked by Mr. T. M. C. Asser, arbitrator, said:

'The Government of the United States claims, neither in Bering Sea nor in its other bordering waters, an extent of jurisdiction greater than a marine league from its shores, etc.'

U. S. Foreign Relations 1902, Appendix 1, pages 440, 461; League of Nations Conference for the Codification of International Law, Vol. 2, page 130.

[fol. 90] On January 23, 1904, in address by Mr. Chief Justice Charles E. Hughes, of the Supreme Court of the United States, then Secretary of State, reprinted in 18 Am. Journal of International Law, pages 229-230-231, said:

'The Government of the United States has repeatedly asserted that the limits of territorial waters extend to three marine miles outward from the coast-line. This has been asserted by our Government in making claims upon other Governments • • •

'It is quite apparent that this Government is not in a position to maintain that its territorial waters extend beyond the three mile limit.'

League of Nations Conference for the Codification of International Law, Vol. 2, page 130."

X

The Court erred in holding and determining under the undisputed evidence in this cause that the alleged offense charged in the Information against the defendant (appellant) was committed, done and performed within the territorial jurisdiction of the criminal courts of the State of Florida.

XI

The Court erred in sustaining the ruling of the Circuit Court of Pinellas County, Florida, sitting as the first appellate court, in overruling and denying the motion of the defendant (appellant) for new trial upon each of the [fol. 91] grounds in said motion set forth.

XII

The Court erred in sustaining the ruling of the Circuit Court of Pinellas County, Florida, sitting as the first appellate court, in overruling and denying the defendant's (appellant's) motion in arrest of judgment upon each of the grounds in said motion set forth.

XIII

The Court erred in sustaining the ruling of the Circuit Court of Pinellas County, Florida, sitting as the first appellate court, that "the jurisdiction of the criminal courts of the State of Florida does extend nine nautical miles or three marine leagues from mean low tide on the coast line of the State of Florida westward into the Gulf of Mexico notwithstanding the various provisions of the Constitution of the United States set forth in the grounds of appeal.

XIV

The Court erred in sustaining the ruling and opinion of the Circuit Court of Pinellas County, Florida, sitting as the first appellate court, to the effect that "the Court is of the opinion and so holds that the boundaries of the State of Florida on the West shore of the State of Florida, as fixed by the Constitution of the State of Florida of 1885 extending the western boundary of the State of Florida three marine leagues from mean low tide on the Western [fol. 92] Coast of the State of Florida and adjacent islands is valid and binding on the courts of the State of Florida, notwithstanding the following provisions of the Constitution of the United States, to-wit: Article 6; Article 2, Section 2, Clause 2; Article One, Section 10, Paragraph One; Article One, Section 10, Paragraph 3."

XV

The Court erred in sustaining the ruling of the Circuit Court of Pinellas County, Florida, sitting as the first appellate court, that "this Court is further of the opinion and holds that the boundary line fixed as the western boundary of the State of Florida by the Constitution of 1885, is valid and binding upon the criminal courts of the State of Florida, notwithstanding the various treaties entered into with foreign countries set forth in the record and which said treaties of the United States were entered into pursuant to the authority of the Constiution of the United States, and each and all of the same fix the international boundary at one marine league from mean low tide on the shore line of the mainland and adjacent islands."

XVI

The Court erred in sustaining the ruling and opinion of the Circuit Court of Pinellas County, Florida, sitting as the first appellate court, that "the western boundary line of the State of Florida, as fixed by the Constitution of [fols. 93-147] the State of Florida of 1885, is valid and binding on the criminal courts of the State of Florida, notwithstanding the decisions and political opinions of the executive department of the federal government announced since 1794 down to the present time to the effect that the extreme limits of the territorial boundaries of the United States of America is and shall be a line parallel with and one marine league from mean low tide on the shore of the mainland and adjacent islands of the United States, which line is and constitutes the recognized international boundary.

XVII

The Court erred in sustaining the judgment and sentence of the Circuit Court of Pinellas County, Florida, sitting as the first appellate court, in the following language: "the judgment of conviction of the appellant by the County Court of Pinellas County, Florida, and the sentence imposed on the appellant by the County Court of Pinellas County, Florida, are each hereby affirmed."

Respectfully submitted, Dickenson & Dickenson, by
W. B. Dickenson, Attorney for Appellant.

[fol. 148] IN SUPREME COURT OF FLORIDA

[Title omitted]

ORDER ALLOWING APPEAL

The above stated cause coming on to be heard before me this day upon the petition of the said Lambiris Skiriotes for the allowance of an appeal to the Supreme Court of the United States of America from that certain final judgment and order of the Supreme Court of the State of Florida filed and entered September 6, 1940, in that certain cause wherein Lambiris Skiriotes was plaintiff and The State of Florida was defendant. And,

Upon inspection of the said petition for the allowance of the said appeal, it appearing to this Court that the said petition is in due form and in full compliance with the rules of the Supreme Court of the United States now in force. And,

It further appearing from said petition that this case is one in which, under the acts of Congress in force when the Act of January 31, 1928, was passed, a review could be had in the Supreme Court of the United States on Writ [fol. 149] of Error. And,

It further appearing from the said petition and statement of the grounds upon which it is contended that the questions involved are substantial, that there are substantial rights involved in this case effecting not only the petitioner but many hundreds of people equally and likewise affected and that one of the largest industries in the State of Florida is greatly affected thereby and that the constitutional rights of all these people engaged in the said industry are involved in this litigation, and that therefore the questions involved should be finally settled and determined in order that the rights of all persons involved, as well as the petitioner, should be determined. And,

It further appearing from the said petition that the petition sustains the fact that the same will support the assertion that the rulings of the court were of a nature to bring the case within the statutory provision conferring jurisdiction on the Supreme Court of the United States. And,

It further being made to appear from the said petition that there is involved in the litigation the question of the

validity of a statute of the State of Florida, the validity of a constitutional provision of the Constitution of the State of Florida, and an assertion that the said statute and constitutional provision of the State of Florida are in con-
[fol. 150] flict with various provisions of the Constitution of the United States of America, and also in conflict with various treaty provisions of various treaties of the United States of America and in conflict with the political rulings and decisions of the Executive and State Departments of the United States of America as asserted and set forth in the petition. And,

It further appearing that the said application for the allowance of appeal as aforesaid was duly filed and all accompanying papers required by the rule duly filed within the time such application may be filed under the rules of the Supreme Court of the United States now in force. And,

The petition being otherwise in the form prescribed by the rules of the Supreme Court of the United States of America and in conformity with the statutes of the United States of America.

It Is Thereupon Considered, Ordered and Adjudged that the petition of the above named Lambiris Skiriotes for the allowance of an appeal from the said final judgment and order of this Court, be, and the same is hereby granted.

It Is Further Considered, Ordered and Adjudged that the appeal prayed for in the said petition for the allowance of appeal from that certain order and judgment of this
[fol. 151] Court made and entered September 6, 1940, to the Supreme Court of the United States of America, be, and the same is hereby granted and allowed.

Done and Ordered this 19th day of November, A. D. 1940, at Tallahassee, Leon County, Florida.

Glenn Terrell, Chief Justice of the Supreme Court of the State of Florida.

Service of a copy of the above and foregoing Order Allowing Appeal is hereby acknowledged for and on behalf of the State of Florida, this 19th day of November, A.D. 1940.

George Couper Gibbs, Attorney General of the State of Florida, acting for and on behalf of the State of Florida, By: Wm. Fisher, Jr., Assistant Attorney General.

[fols. 152-153] Citation in usual form showing service on George Couper Gibbs omitted in printing.

[fol. 154] IN SUPREME COURT OF FLORIDA

[Title omitted]

ORDER FIXING AMOUNT OF BOND

The above and foregoing cause coming on to be heard before me upon application of Lambiris Skiriotes for an order fixing the amount, terms and conditions of the bond to be given by the said Lambiris Skiriotes as security for costs that may accrue or be incurred in and about the appeal to the United States Supreme Court, which appeal has been allowed, and upon the further application of the said Lambiris Skiriotes to fix the amount, terms and conditions of the supersedeas bond to be given by the said Lambiris Skiriotes.

And the Court being advised in the premises;

It Is Thereupon Ordered, Adjudged and Decreed that the said Lambiris Skiriotes do give a good and sufficient bond in the sum of One Hundred ($100.00) Dollars, with two good and sufficient sureties thereon and conditioned to diligently prosecute his said appeal to a final determination and further conditioned that in the event the said cause shall be [fol. 155] dismissed by the Supreme Court of the United States or decided adversely to his contention and the decree of the lower court shall be affirmed, then and in that event, to pay all costs that may have been incurred or accrued in and about the premises against the State of Florida.

It Is Further Ordered and Adjudged that the defendant may be released from custody upon the giving of a bond in the sum of Two Hundred ($200.00) Dollars, with two good and sufficient sureties thereon, conditioned that in the event this cause shall be affirmed in the Supreme Court of the United States or the same be dismissed in the Supreme Court of the United States that he will thereupon personally appear and respond to the sentence and judgment of the trial court.

Done and Ordered at Tallahassee, Leon County, Florida, this 19th day of November, A.D. 1940.

Glenn Terrell, Chief Justice of the Supreme Court of the State of Florida.

[fols. 156-157] Cost Bond on Appeal for $100.00 approved. Omitted in printing.

[fol. 158] IN SUPREME COURT OF FLORIDA

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD

To the Honorable Guyte P. McCord, Clerk of the above entitled Court:

You are hereby directed to make a transcript to the Supreme Court of the United States under your hand and seal of a true copy of the material parts of the record in the above entitled cause, as directed by Rule 10 of the Revised Rules of the Supreme Court of the United States and other rules applicable to appeals. In making up the record you will please to include and set forth in full therein the following papers:

1. The Petition to the Supreme Court of the State of Florida for a Writ of Certiorari.

2. The Certificate of the Honorable Ray E. Green, Clerk of the Circuit Court in and for Pinellas County, Florida, showing and setting forth all papers and files in the Circuit Court of the Sixth Judicial Circuit of Florida, in and for Pinellas County, which he included in the several exhibits attached to the Application for Writ of Certiorari.

[fol. 159] 3. Exhibit "A", the same being the Judgment entered in said cause by the Honorable John U. Bird, on the 30th day of April, 1940, acting as appellate judge.

4. The certified copy of appeal papers as certified by Honorable Ray E. Green, Clerk of the County Court, in and for Pinellas County, Florida, on the 25th day of March, A. D. 1940.

5. The Opinion and Judgment of the Supreme Court of the State of Florida filed September 6, 1940.

6. The Petition to the Honorable Glenn Terrell, Chief Justice of the Supreme Court of the State of Florida, for the allowance of an appeal to the Supreme Court of the United States; showing Acceptance of Service thereon.

7. The Assignments of Error and the statement directing attention to the provisions of Paragraph 3 of Rule 12 of the Revised Rules of the Supreme Court of the United

States attached thereto, together with the Acceptance of Service of the Appellee.

8. The Jurisdictional Statements filed by the Appellant; showing Acceptance of Service thereon.

9. The Order of the Honorable Glenn Terrell, Chief Justice of the Supreme Court of the State of Florida, allowing the appeal.

10. The Citation to the Appellee issued by the Honorable Glenn Terrell, Chief Justice of the Supreme Court of the State of Florida, showing Acceptance of Service thereon.

[fol. 160] 11. These Written Directions for making up the record.

All other papers and records you will omit from the record, unless directed by the Appellee to include the same.

Dickenson & Dickenson, by W. B. Dickenson, Attorneys for Appellant.

Service of a copy of the above and foregoing Praecipe Indicating Portions Of Record To Be Incorporated In Transcript is hereby acknowledged for and on behalf of The State of Florida, this 19th day of November, A. D. 1940.

George Couper Gibbs, Attorney General of the State of Florida, acting for and on behalf of the State of Florida. By Wm. Fisher, Jr., Assistant Attorney General.

[fol. 161] IN SUPREME COURT OF FLORIDA

[Title omitted]

PRAECIPE FOR ADDITIONAL PORTIONS OF TRANSCRIPT

To the Honorable Guyte P. McCord, Clerk of the above Court:

You are hereby further directed in making up the transcript for transmission to the Supreme Court of the United

States in the above entitled cause, as directed by Rule 10 of the Revised Rules of the Supreme Court of the United States and other rules applicable to appeals, in addition to the directions heretofore filed in this cause, to also include in the transcript before the directions are put in the order fixing the bond for costs required of the appellant, which said order was made and entered by the Honorable Glenn Terrell, Chief Justice of the Supreme Court of Florida, on the 19th day of November, A. D. 1940, and filed in your office on said date.

You will also please to include in the transcript the bond for costs filed in your office by the said appellant in compliance with the order above referred to.

Dickenson & Dickenson, by W. B. Dickenson, Attorneys for Appellant.

[fol. 162] STATE OF FLORIDA,
County of Leon:

I hereby accept service of the above and foregoing Amendment to the Praecipe Indicating Portions of the Record to be incorporated in the transcript in the above entitled cause.

Dated at Tallahassee, Florida, this 23rd day of November, A. D. 1940.

George Couper Gibbs, Attorney General of the State of Florida, by Wm. Fisher, Jr., Assistant Attorney General.

[fol. 163] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY AND DESIGNATION OF PARTS OF THE RECORD WHICH HE THINKS ARE UNNECESSARY FOR THE CONSIDERATION OF THE COURT—Filed January 6, 1941

I

Appellant insists that under the provisions of Section One of Article Fourteen of the Constitution of the United States and also under the provisions of Article Six of the Con-

stitution of the United States and also under the provisions of Article Two, Section Two, Clause Two of the Constitution of the United States and also under the provisions of Article One, Section Ten, Clause One of the Constitution of the United States and also under the provisions of Article One, Section Ten, Clause Three of the Constitution of the United States, that the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida, adopted in 1885, and the law of the State of Florida under which the appellant was prosecuted are invalid, null and void for the [fol. 164] reason that no state of the Union may extend its boundaries beyond the international boundaries of the United States of America.

II

The appellant insists that the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida of 1885, and the law under which this appellant was prosecuted are invalid and void for the reason that the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida, conflict with and violate the treaty provisions of the United States of America, as shown by the record.

III

The appellant insists that even if the Court should consider that the question involved is a political question, that the record shows that under the political rulings of the Executive and State Departments of the Government it has been conclusively established that the international boundary of the United States of America has been definitely and permanently fixed at one marine league from mean low tide on the mainland and adjacent islands, and that, therefore, the Constitution of the State of Florida attempting to fix the boundaries of the State of Florida at nine nautical miles from mean low tide, and the law of the State of Florida under which the appellant was prosecuted are both null and void in that the same violate the rulings [fol. 165] and decisions of the Executive and State Departments of the United States Government.

IV

Appellant insists that the jurisdiction of the Criminal Courts of the State of Florida does not and cannot extend to a greater distance than one marine league from mean low tide on the mainland of the State of Florida and adjacent islands included within the territory of the State of Florida.

The appellant thinks that the entire record heretofore filed is necessary for the consideration of the questions above stated, except that, as provided by Rule 13, Paragraph 9, all duplications and repetitions mentioned may be omitted.

W. B. Dickenson, Jr., Attorney for Appellant.

STATE OF FLORIDA,
County of Hillsborough:

Before the undersigned authority personally appeared W. B. Dickenson, Jr. who being first duly sworn according to law, deposes and says that he placed a carbon copy of the [fol. 166] above and foregoing Statement of Points on Which Appellant Intends to Rely and Designation of Parts of the Record which He Thinks Are Unnecessary for the Consideration of the Court, in an envelope addressed to Honorable George Couper Gibbs, Attorney-General of the State of Florida, securely sealed the same and placed thereon sufficient postage to insure its delivery and deposited the same in the United States mails at Tampa, Hillsborough County, Florida, on the 2nd day of January, A. D. 1941.

(Signed) W. B. Dickenson, Jr.

Sworn to and subscribed before me this 2nd day of January, A. D. 1941. (Signed) Grace Mary Rogers, Notary Public, State of Florida at Large. My commission expires August 4, 1941. (Seal.)

Endorsed on Cover: File No. 45,007. Florida Supreme Court, Term No. 658. Lambiris Skiriotes, Appellant, vs. The State of Florida. Filed December 28, 1940, Term No. 658 O. T. 1940.

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CHARLES ELMORE CROPLEY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 658

LAMBIRIS SKIRIOTES,

Appellant,

vs.

THE STATE OF FLORIDA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA.

STATEMENT AS TO JURISDICTION.

W. B. DICKENSON, SR.,
W. B. DICKENSON, JR.,
Counsel for Appellants.

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IN THE SUPREME COURT OF THE STATE OF FLORIDA

LAMBIRIS SKIRIOTES,

Appellant,

vs.

THE STATE OF FLORIDA,

Appellee.

WRIT OF ERROR IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR PINELLAS COUNTY.

JURISDICTIONAL STATEMENTS.

Comes now Lambiris Skiriotes and respectfully shows Your Honors that prior to the Act of Congress of January 31, 1928, being Chapter 14, 45 Stat. 54 he was under the provisions of the Act of Congress of February 13, 1925, being Chapter 229, 43 Stat. 936, entitled to a writ of error, under the provisions of Section 237, Paragraph A, in the Supreme Court of the United States in this cause; said section and paragraph providing:

> "A final judgment or decree in any suit in the highest court of the State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity, or where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme

Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court in which it was removed by the writ."

The Act of Congress of January 31, 1928, being Chapter 14, 45 Stat. 54, provides in Section One, as follows:

"That the writ of error in cases, civil and criminal, is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal."

The Act of Congress of April 26, 1928, being Chapter 440, 45 Stat. 466, Section 2, provides:

"That the Statute regulating the right to writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and invoking such relief, including the provisions relating to costs, supersedeas and mandate shall be applicable to the appeal which the preceding section substitutes for a writ of error."

The statute of the State of Florida, the validity of which is involved in this litigation, was originally Section 4 of Chapter 7389, Laws of Florida, enacted by the Legislature of 1917, which said law was carried forward and re-enacted as Section 8087, Compiled General Laws of the State of Florida, adopted in 1927, which is set forth in the Compiled General Laws in the following language:

"8087. (5846.) Diving suits, helmets, etc., used by deep sea divers, prohibited.—It shall be unlawful for any person, persons, firm or corporation to maintain and use for the purpose of catching or taking commercial sponges from the Gulf of Mexico, or the Straits of Florida or other waters within the territorial limits

of the State of Florida, diving suits, helmets or other apparatus used by deep sea divers.

Anyone violating any of the provisions of this section shall be fined in the sum not exceeding five hundred dollars or by imprisonment not exceeding one year, or by both such fine and imprisonment."

It will be noted that the Act does not define "territorial limits of the State of Florida". It is, therefore, necessary to refer to the Constitution of the State of Florida, adopted in 1885, which will be found in Volume 5 of the Compiled General Laws of Florida, adopted in 1927, at pages 4239 to 4466 inclusive, together with all amendments to the Constitution now in force.

Article One of the said Constitution fixing the boundaries of the State of Florida is in the following language:

"The boundaries of the State of Florida shall be as follows: Commencing at the mouth of the River Perdido; from thence up the middle of said river to where it intersects the South boundary line of the State of Alabama, and the thirty-first degree of north latitude; thence due east to the Chattahoochee River; thence down the middle of said river to its confluence with the Flint River; thence straight to the head of the St. Mary's River; thence down the middle of said river to the Atlantic Ocean; thence southeastwardly along the coast to the edge of the Gulf Stream; thence southwestwardly along the edge of the Gulf Stream and Florida Reefs to, and including the Tortugas Islands; thence northeastwardly to a point three leagues from the mainland; thence northwestwardly three leagues from the land to a point west of the mouth of the Perdido River; thence to the place of beginning.".

We call the Court's attention to the fact that there is no statute in Florida fixing the boundaries of the State, and therefore, the above section of the Constitution will have to be relied upon for that purpose.

The date of the judgment of the Supreme Court of the State of Florida which this appeal seeks to have the Supreme Court of the United States review in this proceeding is September 6, 1940, a copy of which judgment is hereto attached and marked Exhibit "A", reference thereto being prayed as often as may be necessary, the same being made a part of this statement as fully and completely as though set out in *haec verba.*

This is an appeal from the final judgment of the Supreme Court of the State of Florida, and in compliance with Paragraph One of Rule 12 of the Revised Rules of the Supreme Court of the United States, we give to the Court the following information:

On January 20, 1940, Henry S. Baynard, Prosecuting Attorney of the County of Pinellas, State of Florida, filed an information in the County Court of Pinellas County, Florida, charging that Lambiris Skiriotes on the 8th day of March, 1938, knowingly, willfully and unlawfully maintained and used for the purpose of catching or taking commercial sponges from the Gulf of Mexico within the territorial limits of the State of Florida, to-wit, at a point more than one marine league from mean low tide on the West shore line of the State of Florida and southwest of Anclote Key and northwest of Hog Island and within three marine leagues of mean low tide on the West shore line of the State of Florida at a point approximately two marine leagues from mean low tide on the West shore line of the State of Florida and within the territorial limits of the County of Pinellas, a diving suit, helmet, and other apparatus used by deep-sea divers and did then and there catch or take commercial sponges from the Gulf of Mexico in violation of the provisions of Section 4 of Chapter 7389, Laws of Florida, enacted in 1917, and re-enacted as Section 8087, Compiled General Laws of Florida, adopted in 1927. A true and correct copy of the Information will be found in the

Transcript of Record at page 2, the same being made a part of this statement by reference.

To the said Information Lambiris Skiriotes, through his counsel, filed a Motion to Quash the said information upon the following grounds, to-wit:

1. Because the Information wholly fails to charge this defendant with the violation of any valid statute or law of the State of Florida, but on the contrary shows upon its fact that this defendant could not under the allegations of the Indictment be held guilty of violation of any valid law of the State of Florida, in this, the said Information charges that this defendant at a point more than one marine league from mean low tide on the West shore line of the State of Florida at a place approximately two marine leagues from shore was using diving apparatus commonly used by deep-sea divers for the purpose of taking or catching commercial sponges from the Gulf of Mexico; that the said place and point charged in the Information is outside of the territorial limits of the United States of America, and therefore necessarily outside of the territorial limits of the State of Florida, which obviously could not extend outside the territorial limits of the United States; that Section 4 of Chapter 7389, Laws of Florida enacted by the Legislature of Florida of 1917 and re-enacted as Section 8087, Compiled General Laws of Florida, adopted in 1927, under which the Information was filed, is invalid, unenforceable, null and void by reason of the fact that the said Act is in violation of the provisions of the Constitution of the United States now in force, to-wit: Section One of Article 14, originally adopted as the Fourteenth Amendment to the Constitution of the United States.

2. The said statute of the State of Florida under which the Information was filed violates the provisions of Article 6 of the Constitution of the United States of America.

3. The said law of the State of Florida under which the Information was filed in this cause violates Article One, Section 10, Paragraph One, of the Constitution of the United States of America.

4. The said law of the State of Florida under which the Information was filed violates Article 2, Section 2, Clause 2, of the Constitution of the United States of America.

5. The law of the State of Florida under which the said Information was filed violates Article One, Section 10, Paragraph 3, of the Constitution of the United States of America.

6. The law of the State of Florida under which the Information was filed against this defendant is null and void in that it violates the treaty provisions of the United States of America in the following respects and following treaties, to-wit:

The treaty entered into between the United States of America and Spain and designated a treaty of amity, settlement, and limits, which was signed at Washington, February 22, 1819; ratification of the same being advised by the Senate, February 19, 1821; same being ratified by the President, February 22, 1821; the same being ratified by Spain, October 24, 1820; ratifications exchanged at Washington, D. C. February 22, 1821; and proclaimed by the President on February 22, 1821; and the same being the treaty under which the United States acquired from Spain the State of Florida, which said treaty conveyed to the United States only the uplands of the Peninsular of Florida, together with certain islands lying adjacent thereto, and fixed the boundaries of the State of Florida at mean low tide on both the Atlantic Ocean and the Gulf Coast of the State. 8 Stat. 254

Treaty Series, No. 685. Convention between the United States and Great Britain—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, January 23, 1924; Ratification advised by the Senate, March 13, 1924; Ratified by the President, March 21, 1924; Ratified by Great Britain, April 30, 1924; Ratifications exchanged at Wash-

ington, May 22, 1924; Proclaimed, May 22, 1924. 43 Stat. 1761

Treaty Series, No. 694. Convention between the United States and Germany—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, May 19, 1924; Ratification advised by the Senate, May 26, 1924; Ratified by the President, August 9, 1924; Ratified by Germany, July 8, 1924; Ratifications exchanged at Washington, August 11, 1924; Proclaimed, August 11, 1924. 43 Stat. 1815

Treaty Series, No. 693. Convention between the United States and Denmark—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, May 29, 1924; Ratification advised by the Senate, June 3, 1924; Ratified by the President, July 11, 1924; Ratified by Denmark, July 8, 1924; Ratifications exchanged at Washington, July 25, 1924; Proclaimed July 25, 1924. 43 Stat. 1809

Treaty Series, No. 702. Convention between the United States and Italy—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, June 3, 1924; Ratification advised by the Senate, June 4, 1924; Ratified by the President, October 16, 1924; Ratified by Italy, July 7, 1924; Ratifications exchanged at Washington, October 22, 1924; Proclaimed, October 22, 1924. 43 Stat. 1844

Treaty Series, No. 689. Convention between the United States and Norway—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, May 24, 1924; Ratification advised by the Senate, May 31, 1924; Ratified by the President, June 20, 1924; Ratified by Norway, June 20, 1924; Ratifications exchanged at Washington, July 2, 1924; Proclaimed, July 2, 1924. 43 Stat. 1772

Treaty Series, No. 698. Convention between the United States and Sweden—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, May 22, 1924; Ratification advised by the Senate, May 26, 1924; Ratified by the President, August 15, 1924; Ratified by Sweden, June 13, 1924; Ratifications exchanged at Washington, August 18, 1924; Proclaimed, August 18, 1924. 43 Stat. 1830

Treaty Series, No. 712. Convention between the United States and The Netherlands—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, August 21, 1924; Ratification advised by the Senate, December 10, 1924; Ratified by the President, February 26, 1925; Ratified by The Netherlands, March 31, 1925; Ratifications exchanged at Washington, April 8, 1925; Proclaimed April 8, 1925. 44 Stat. 2013

Treaty Series, No. 707. Convention between the United States and Panama—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, June 6, 1924; Ratification advised by the Senate, December 10, 1924; Ratified by the President, January 15, 1925; Ratified by Panama, December 30, 1924; Ratifications exchanged at Washington, January 19, 1925; Proclaimed, January 19, 1925. 43 Stat. 1875

Treaty Series, No. 749. Convention between the United States and Spain—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, February 10, 1926; Ratification advised by the Senate, March 3, 1926; Ratified by the President, March 30, 1926; Ratified by Spain, July 20, 1926; Ratifications exchanged at Washington November 17, 1926; Proclaimed, November 17, 1926. 44 Stat. 2465

Treaty Series, No. 738. Convention between the United States and Cuba—Prevention of Smuggling of Intoxicating Liquors; Signed at Habana, March 4, 1926; Ratification advised by the Senate, April 9, 1926; Ratified by the President, April 15, 1926; Ratified by Cuba, June 17, 1926; Ratifications exchanged at Habana, June 18, 1926; Proclaimed, June 19, 1926. 44 Stat. 2395

Treaty Series, No. 755. Convention between the United States and France—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, June 30, 1924; Ratification advised by the Senate, December 12, 1924; (Legislative Day of December 10, 1924) Ratified by the President, December 30, 1924; Ratified by France, March 1, 1927; Ratifications exchanged at Washington, March 12, 1927; Proclaimed, March 12, 1927. 45 Stat. 2403

Treaty Series, No. 829. Prevention of Smuggling of Intoxicating Liquors—Convention between the United States of America and Chile; Signed at Washington, May 27, 1930; Ratification advised by the Senate of the United States, June 28, 1930; Ratified by the President of the United States, July 21, 1930; Ratified by Chile, October 2, 1930; Ratifications exchanged at Washington, November 25, 1930; Proclaimed by the President of the United States, November 26, 1930. 46 Stat. 2852

Treaty Series, No. 772. Convention between the United States and Greece—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, April 25, 1928; Ratification advised by the Senate, May 25, 1928; (Legislative Day of May 3, 1928); Ratified by the President, June 11, 1928; Ratified by Greece, January 8, 1929; Ratifications exchanged at Washington, February 18, 1929; Proclaimed, February 18, 1929. 45 Stat. 2736.

Treaty Series, No. 807. Convention between the United States and Japan—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, May 31, 1928; Ratification advised by the Senate, January 26, 1929; Ratified by the President, January 30, 1929; Ratified by Japan, November 22, 1929; Ratifications exchanged at Washington, January 16, 1930; Proclaimed January 16, 1930. 46 Stat. 2446.

Treaty Series, No. 759. Convention between the United States and Belgium—Prevention of Smuggling of Intoxicating Liquors; Signed at Washington, December 9, 1925; Ratification advised by the Senate, March 3, 1926; Ratified by the President, March 30, 1926; Ratified by Belgium, December 5, 1927; Ratification exchanged at Washington, January 11, 1928; Proclaimed, January 11, 1928. 45 Stat. 2456.

Treaty Series, No. 821. Prevention of Smuggling of Intoxicating Liquors—Convention between the United States of America and Poland; Signed at Washington, June 19, 1930; Ratification advised by the Senate of the United States, June 28, 1930; Ratified by the President of the

United States, July 11, 1930; Ratified by Poland, August 1, 1930; Ratifications exchanged at Warsaw, August 2, 1930; Proclaimed by the President of the United States, August 8, 1930. 46 Stat. 2773.

Each of the foregoing treaties in express terms fixes the international boundary of the United States at three marine miles or one marine league measured from the low-water mark on the mainland (see Agreed Statement of Facts, at pages 40-45 of the Record).

7. The law of the State of Florida under which the Information was filed against this defendant in this cause violates the decisions of the Political and Executive Department of the Federal Government on the question of what is and constitutes the extreme limits of the territorial boundaries of the United States of America, as shown by the Report of the 1929 Conference at Geneva of the League of Nations, issued by the Publications Department of the League of Nations "Conference for the Codification of International Law", Tome II.—Eaux Territoriales, wherein it is shown that on November 8, 1793, Mr. Jefferson, then Secretary of State, wrote a letter to the British Minister at Washington, in which he said that the President had instructed him to say that officers acting under his authority to consider those heretofore given them as restrained for the present to the distance of one sea league or three geographical miles from the seashores. 1 Moore's Digest of International Law, page 702; League of Nations Conference for the Codification of International Law, Vol. 2, page 129.

On the same date Mr. Jefferson addressed to the French Minister to the United States, a note to the same effect. (1 American State Papers, Foreign Relations, 183).

On September 2, 1796, Mr. Pickering, Secretary of State, addressed to Lieutenant-Governor of Virginia as follows:

"Our jurisdiction * * * has been fixed to extend three geographical miles from our shores."

1 Moore's Digest of International Law, page 704, League of Nations, Vol. 2, page 129.

On February 3rd, 1807, Mr. Madison, Secretary of State, addressed Messrs. Monroe and Pinkney, Ministers to England, as follows:

"There could surely be no pretext for allowing less than a marine league from the shore, that being the narrowest allowance found in any of the authorities on the law of nations."

1 Moore's Digest of International Law, page 705, League of Nations, Vol. 2, page 129.

On December 16, 1862, Mr. Seward, Secretary of State, addressed a letter to Mr. M. Tassara, Spanish Minister, stating that the United States territory extended one marine league or three miles from the coastline. (1 Moore's Digest of International Law, pages 706-707; League of Nations Conference for the Codification of International Law, Vol. 2, page 129-130.)

On May 28, 1886, Mr. Bayard, Secretary of State, wrote Mr. Manning, Secretary of the Treasury, in which he said:

"The position of this department has uniformly been that the sovereignty of the shore does not, so far as territorial authority is concerned, extend beyond three miles from low-water mark, etc."

1 Wharton's Digest of International Law, page 107; 1 Moore's Digest of International Law, page 720, League of Nations, Vol. 2, page 130.

On July 3, 1902, Mr. Herbert H. D. Pierce, Agent of the United States in the C. H. White case, Russian arbitration,

in reply to the question asked by Mr. T. M. C. Asser, arbitrator, said:

> "The Government of the United States claims, neither in Bering Sea nor in its other bordering waters, an extent of jurisdiction greater than a marine league from its shores, etc."
>
> U. S. Foreign Relations 1902, Appendix 1, pages 440, 461; League of Nations Conference for the Codification of International Law, Vol. 2, page 130.

On January 23, 1904, in an address to Mr. Chief Justice Charles E. Hughes, of the Supreme Court of the United States, then Secretary of State, reprinted in 18 Am. Journal of International Law, pages 229-230-231, said:

> "The Government of the United States has repeatedly asserted that the limits of territorial waters extend to three marine miles outward from the coastline. This has been asserted by our Government in making claims upon other Governments * * *
>
> "It is quite apparent that this Government is not in a position to maintain that its territorial waters extend beyond the three mile limit."
>
> League of Nations Conference for the Codification of International Law, Vol. 2, page 130.

The above and foregoing Motion to Quash the Information against the Defendant was overruled and denied by the trial court, which court decided adversely to the Defendant in the following language:

> "The above and foregoing cause coming on to be heard and being argued by the attorneys for both parties, and the Court now being fully advised:
>
> It is thereupon considered, ordered and adjudged that the said Motion to Quash be and the same is hereby denied.

Dated this 26th day of January, A. D. 1940, in Chambers, at St. Petersburg, Florida.

Jack F. White
Judge of the Said Court."

The cause thereupon came on for trial and in order to save expense, and there being no dispute between the defense and the State as to the facts, the State and defendant waived the intervention of jury in writing and agreed to submit the same to the Court upon an agreed statement of facts, which agreed statement of facts and waiver of jury constitute the "Transcript of Testimony and Proceedings at the Trial of the Defendant" found in the record at pages 14 to 25; the pertinent part of which stipulation was that the Court at the time had before him all the treaties brought in question in this proceeding and also all of the papers and documents set forth in this proceeding, and that his attention was called to the provisions of the statute set forth above and of the constitution of the State of Florida, together with all of the provisions of the Constitution of the United States.

The stipulation further shows that on the 8th day of March, 1938, the defendant, who is by trade and occupation a deep-sea diver engaged in sponge fishery and being a resident of the Town of Tarpon Springs, Pinellas County, Florida, and being engaged in sponge fishing for a number of years, was arrested by Samuel Mickler, a Deputy Sheriff of Pinellas County, Florida, at a point in the Gulf of Mexico more than one marine league from the nearest shore line or adjacent island and within three marine leagues from mean low tide on the West shore line of the State of Florida at a point approximately two marine leagues from shore.

The trial court, upon this showing, entered his final judgment and sentence, a copy of which is hereto appended, marked Exhibit "B".

The defendant thereupon filed his Motion to Vacate and set aside the Verdict and Judgment of Conviction and Grant a New Trial, upon the following grounds:

1. Because the Information filed against the defendant charges the alleged offense to have been committed on the high seas beyond and outside of the jurisdiction of the Court.

2. Because the evidence clearly and conclusively establishes without controversy that the alleged offense with which this defendant was charged and convicted, if committed at all, was committed on the high seas beyond the territorial limits of Pinellas County, Florida, and beyond and outside of the jurisdiction of this court.

3. Because the evidence conclusively and without controversy shows that the alleged offense charged in the Information and of which this defendant was convicted, if committed at all, was committed on the high seas outside of and beyond the jurisdiction of the courts of the State of Florida.

The defendant also filed his Motion in Arrest of Judgment upon the following grounds, to-wit:

1. Because the Information filed against the defendant charges the alleged offense to have been committed on the high seas beyond and outside of the jurisdiction of the Court.

2. Because the evidence clearly and conclusively establishes without controversy—that the alleged offense with which this defendant was charged and convicted, if committed at all, was committed on the high seas beyond the territorial limits of Pinellas County, Florida, and beyond and outside of the jurisdiction of this Court.

3. Because the evidence conclusively and without controversy shows that the alleged offense charged in the In-

formation and of which this defendant was convicted, if committed at all, was committed on the high seas outside of and beyond the jurisdiction of the Courts of the State of Florida.

4. Because the Information as framed clearly shows that the offense alleged therein against this defendant and of which he was convicted, if committed at all, was committed on the high seas outside of and beyond the territorial limits of the United States of America, and of the County of Pinellas; and therefore, this Court has no jurisdiction of the alleged offense charged in the Information.

5. Because the Information charges no crime or offense to have been committed within the jurisdiction of this Court.

6. Because this Court is wholly without jurisdiction to hear, try and determine this cause.

The Judge of the said County Court of Pinellas County, Florida, on the 27th day of January, 1940, did overrule and deny the aforesaid Motion for New Trial and Motion in Arrest of Judgment, in the following language:

> "It is thereupon ordered and adjudged that the said Motion for New Trial filed in this cause by the said defendant, be, and the same is hereby denied.
>
> It is further ordered and adjudged that the Motion in Arrest of Judgment filed by the said Defendant in this cause, be, and the same is hereby denied.
>
> Done and ordered in Open Court at Clearwater, Pinellas County, Florida, this 27th day of January, A.D. 1940.
>
> JACK F. WHITE,
> *Judge of the Said Court.*"

The said Judge, on the 27th day of January, 1940, did then and there proceed to pass judgment and sentence upon

the defendant, Lambiris Skiriotes, in the following language, to-wit:

> "It is therefore the sentence of the law and the judgment and order of this court that you, Lambiris Skiriotes, for your said offense for which you now stand convicted, shall serve two (2) days in the County Jail of Pinellas County, Florida. It is further considered and ordered that you, Lambiris Skiriotes, shall also pay a fine of Fifty ($50.00) Dollars."

All of which will more fully appear by reference to the record in this cause, the pertinent parts of the proceedings involved in this litigation being herein set forth, and the pages not being available at this time we cannot specifically refer to the pages.

Under the provisions of Chapter 19554, Laws of Florida enacted at the session of the Legislature of Florida of 1939, Section 280 provides:

> "Section 280. Appeal Only Method of Review. Hereafter the only method of reviewing the proceedings in a prosecution by indictment or information, shall be by appeal. Writs of error as methods of review in criminal causes and writs of certiorari ad audendum are hereby abolished."

the defendant entered, filed and recorded his appeal, in the following language:

> "Comes now the above named defendant, Lambiris Skiriotes, and enters this his appeal in the above entitled cause from the judgment of conviction heretofore entered against this defendant in said cause and from the sentence imposed upon this defendant upon the said judgment of conviction, and makes the same returnable in the Circuit Court of the Sixth Judicial — of Florida, in and for Pinellas County, on the 29th day of March, A. D. 1940."

The appeal was perfected, briefed and argued before the Honorable John U. Bird, one of the Circuit Judges of the Sixth Judicial Circuit of the State of Florida, in and for Pinellas County, who, on the 30th day of April, 1940, entered in said cause his opinion and judgment specifically holding against the appellant, Lambiris Skiriotes, on each and every of the questions raised in the Motion to Quash the Indictment and in the Assignments of Error, which Assignments of Error will be found in the Transcript at pages 81 to 94, and said Assignments of Error being the same in substance as contained in the Motion to Quash the Information as grounds of the said motion. A true and correct copy of the judgment and order of the Circuit Court is hereto appended as Exhibit "C".

Upon the entry of the aforesaid Order of the Circuit Court, the defendant, being under the statutes of the State of Florida and the rules of practice of the courts of the State of Florida, entitled to bring the cause before the Supreme Court of the State of Florida by certiorari, made application within the time limited for such application to the Supreme Court of the State of Florida and filed therewith his brief in support of the same, and the Attorney-General of the State of Florida duly filed his brief; which said cause, upon the said application for certiorari and upon consideration of the questions involved, the Supreme Court of the State of Florida, on the 6th day of September, 1940, did enter its order affirming the judgment and decision of the Circuit Court, a true and correct copy of which opinion of the Supreme Court is hereto appended as Exhibit "A".

It is contended that the questions involved in this case are substantial for the following reasons, all of which reasons do not appear in the Transcript of Record but were and are known to all the courts and people of the State of Florida and the people generally throughout the United

States, and we assume that what is known by everyone who is well-informed is also known by the court.

First: The sponge industry has its headquarters at Tarpon Springs, Pinellas County, Florida, and the sponge fields are located exclusively in the Gulf of Mexico extending from close in shore to some forty miles from shore and in certain sections of the State even further. The industry produces many millions of dollars of commercial sponge every year. There are engaged in the sponge industry some seventy large diving boats that carry crews of from six to ten or twelve men. This industry gives employment to many hundreds of men and women and has done so for many years.

Second: There are two methods of taking sponge from the floor of the Gulf of Mexico. One class of people being what are commonly called in the industry "hookers". These people use long poles, perhaps thirty or thirty-five feet in length, with a three prong hook at the end. They go out in row boats and look through a glass-bottom bucket and hook these sponges from the floor of the Gulf of Mexico with these long poles. This is necessarily a slow process, not very remunerative and falls far short of meeting the demand for commercial sponge; and they are limited to shallow water.

The other sponge divers, of which Lambiris Skiriotes was one, take sponge from the floor of the Gulf of Mexico by the use of diving apparatus, in which method the diver goes down to the bottom and cuts the sponge loose and places the same in a sack and sends the sack up when full. These men go down to depths of one hundred and fifty to two hundred feet and work as far away from shore as thirty or thirty-five miles. The sponge beds normally are apparently inexhaustible.

Third. It is within the knowledge of everyone that approximately six or eight months prior to the arrest of

Lambiris Skiriotes the sponge beds in very deep water far out in the Gulf of Mexico were attacked by a fungus growth that practically depleted the sponge beds; the sponge fishing industry requested assistance from the United States Bureau of Fisheries in an attempt to save the sponge beds and the large industry if possible. Thereupon, the Bureau sent to Tarpon Springs, Florida, Dr. Paul S. Galtsowl of the United States Bureau of Fisheries, Washington, D. C., who made an investigation to determine if something could be done to relieve the situation, but apparently he was unable to find any means of coping with the situation, at least nothing so far has been accomplished toward that end. If the court desires a report from the United States Bureau of Fisheries the same could undoubtedly be made available.

Fourth. If the Court will take a map of the State of Florida and trace the boundaries, as attempted to be fixed by the Constitution of the State of Florida it will be apparent that there is an irreconcilable conflict between the Constitution of the State of Florida and the several treaties hereinbefore set forth, each and every of which said treaties contain a provision that the international boundary line shall be one marine league from mean low tide on the mainland and adjacent islands. The Court will further find that there is an irreconcilable conflict between the boundaries as fixed by the Constitution of Florida and the decisions and rulings of the executive and State departments of the United States government as set forth herein at pages twelve to fifteen inclusive, supra.

The Court will also find that there is a strip of water some fifty or sixty miles wide and approximately ninety to one hundred miles long, unbroken by the intervention or interposition of any island except along the Southern border of this strip; and that the men engaged in the sponge industry while diving are prohibited by the statute in ques-

tion in this cause and the boundaries as fixed by the Constitution of the State of Florida from using at any point within this wide field of open sea their diving apparatus for the purpose of taking sponge.

Fifth. That there is a substantial question involved in this: that under the said constitutional provision and law of the State of Florida a group of approximately four hundred men, operating approximately seventy-two large diving boats, carrying an average of about six men to the boat, as well as about one hundred men engaged in packing houses, and a large percentage of the population of Tarpon Springs, Florida, which is approximately four thousand, producing sufficient sponge so that in 1939 the gross sales of sponge through the sponge exchange totaled $1,035,553.86, (all of which will more fully appear by reference to the United States census of 1940), will be thrown out of employment and deprived of earning a livelihood, and one of the largest industries of the State of Florida, and the only industry of any importance in the Town of Tarpon Springs will be forced to retire from business by reason of the continuous wholesale arrest of men engaged in the industry whenever they come within nine nautical miles or three marine leagues from shore.

Sixth. There is a substantial question involved in this litigation affecting a large number of citizens of the United States, as set forth in the last paragraph, and their rights in the following respects: The boundaries of the State of Florida, as fixed by the Constitution of Florida of 1885, and the statute quoted herein taken together deny to the several hundred of individuals described in the last paragraph the equal protection of the laws guaranteed by Section One of Article 14 of the Constitution of the United States, in that the aforesaid group of people are not allowed or permitted to ply their occupation or avocation within that strip

of water lying more than three nautical miles or one marine league westward into the Gulf of Mexico from mean low tide on the mainland of Florida; but at the same time grants to that group of sponge fishers designated as "hookers" full and free right to ply their occupation or avocation at any place in the Gulf of Mexico up to the shore line of the uplands of the State of Florida.

The date of the judgment or decree of the Supreme Court of Florida sought to be reviewed by this appeal was that certain order and opinion filed September 6, 1940, in this cause in the Supreme Court of Florida.

The date upon which the application for appeal is presented to Chief Justice Glenn Terrell of the Supreme Court of Florida is November 19th, 1940.

Citation of Cases Believed to Sustain the Jurisdiction of This Court.

By reference to Article VI, Paragraph 2, of the Constitution of the United States, the following provision will appear:

> "This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."

This provision of the Federal Constitution makes the Constitution of the United States and the treaties of the United States of equal legal force and effect and the supreme law of the land and makes the Federal Constitution and treaties of the United States equally binding upon all of the judges of the several States in addition to which the following language is significant; "anything in the

Constitution or laws of any State to the contrary notwithstanding".

The Supreme Court of the United States said:

> "This Constitution is the supreme law of the land, and no Act of Congress is of any validity which does not rest on authority conferred by that instrument."
> *U. S.* v. *Germaine* (Me. 1878), 99 U. S. 510, 25 L. Ed. 482.

See also:

Choctaw Indians (1870), 13 Op. Atty. Gen. 357, *Trial of Andrew Jackson,* 176.

The Supreme Court and other courts of the United States have on numerous occasions said:

> "The Constitutional laws of the United States extend and are paramount over all of the territory of every State and cannot be annulled or abridged in any degree by any law of the State or Constitution of the State."
> 1 *Sprague* (U. S.) 602, 30 Fed. Case No. 18273. Cited in Annotations of the Constitution, Article VI, Clause 2, U. S. C. A.
> *Gibbons* v. *Ogden* (N. Y. 1824), 9 Wheat. 210, 6 L. Ed. 23.
> *In re Metzger* (D. C. N. Y. 1847), 5 N. Y. Leg. Obs. 83, 17 Fed. Cas. 9511.
> *Turner* v. *Baptist Missionary Union* (C. C. Mich. 1852), 5 McLean (U. S.) 344, 24 Fed. Cas. No. 14251.
> *El Paso etc. R. Co.* v. *Guiterez* (Tex. 1909), 215 U. S. 87, 30 S. Ct. 21, 54 L. Ed. 106.
> *U. S.* v. *Farris* (D. C. Cal. 1927), 19 Fed. (2d) 925.

The United States Supreme Court has also said:

> "It must always be borne in mind that the Constitution, laws and treaties of the United States are as much a part of the law of every state as its own local

laws and constitution. • • • This is a fundamental principle in our system of complex national polity."

Hauenstein v. *Lynham* (Va. 1879), 100 U. S. 490, 25 L. Ed. 628.

The Supreme Court of Florida has recognized this principle as shown in the following language:

"The Constitution of the United States within its limited sphere is the supreme law of the land and it is the duty of all officials whether legislative, judicial, executive, administrative or ministerial to so perform every official act as not to violate the constitutional provisions."

Montgomery v. *State* (1908), 55 Fla. 97, 45 So. 879.

The Supreme Court of the United States has also held:

"Where a state law is assailed as repugnant to the Constitution of the United States, and on its face such Act is seemingly within the power of the state to adopt, but its necessary effect and operation is to usurp a power granted by the Constitution to the Government of the United States, it must follow, from the paramount nature of the Constitution of the United States, that the Act is void. In such a case the result of the test of necessary operation and effect is to demonstrate the want of power, because of the controlling nature of the limitations imposed on the states by the Constitution of the United States."

McCray v. *U. S.* (Ohio 1904), 195 U. S. 60, 24 S. Ct. 769, 49 L. Ed. 78, 1 Ann. Cas. 561.

See also:

Northern Securities Co. v. *U. S.* (Minn. 1904), 193 U. S. 344, 24 S. Ct. 436, 48 L. Ed. 679.

Ex parte Siebold (Md. 1879), 100 U. S. 398, 25 L. Ed. 717.

New York v. *Tax Com'rs.* (N. Y. 1862), 2 Black 632, 18 L. Ed. 451.

Cohen v. *Virginia* (Va. 1821), 6 Wheat. 381, 5 L. Ed. 257.
M'Culloch v. *Maryland* (Md. 1819), 4 Wheat. 405, 4 L. Ed. 579.
Lick v. *Faulkner* (1864), 25 Cal. 418.

The Supreme Court of the United States has also held:

"By the Constitution a treaty is placed on the same footing, and made of like obligation, with an act of legislation. Both are declared by that instrument to be the supreme law of the land, and no superior efficacy is given to either over the other. When the two relate to the same subject, the courts will always endeavor to construe them so as to give effect to both, if that can be done without violating the language of either, but, if the two are inconsistent, the one last in date will control the other; provided, always, the stipulation of the treaty on the subject is self-executing."

Whitney v. *Robertson* (N. Y. 1888), 124 U. S. 194, 8 S. Ct. 456, 31 L. Ed. 386.

See also:

Rainey v. *U. S.* (N. Y. 1914), 232 U. S. 310, 34 S. Ct. 429, 58 L. Ed. 617.
U. S. v. *Lee Yen Tai* (1902), 185 U. S. 220, 22 S. Ct. 629, 46 L. Ed. 878.
Horner v. *U. S.* (N. Y. 1892), 143 U. S. 570, 12 S. Ct. 522, 36 L. Ed. 266.
In re Ah Lung (C. C. Cal. 1883), 18 F. 28, 29.
Ex parte Wong Gar Wah (C. C. A. Cal. 1927) 18 F. (2d) 250, certiorari denied (1927), 48 S. Ct. 21, 72 L. Ed. —.

The United States Supreme Court also has said:

"A treaty is in its nature a contract between two nations, not a legislative act. It does not generally effect, of itself, the object to be accomplished, especially so far as its operation is infra-territorial; but is carried

into execution by the sovereign power of the respective parties to the instrument. In the United States a different principle is established. Our Constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself without the aid of any legislative provisions. But when the terms of the stipulation import a contract, when either of the parties engage to perform a particular act, the treaty addresses itself to the political, not the judicial department, and the legislature must execute the contract before it can become a rule for the court."

Foster v. *Neilson* (La. 1829), 2 Pet. 313, 7 L. Ed. 415.

See also:

Chinese Exclusion Case (Cal. 1889) 130 U. S. 600, 9 S. Ct. 623, 32 L. Ed. 1068, affirming (C. C. 1888) 36 F. 431.

Chew Heong v. *U. S.* (C. C. Cal. 1884), 112 U. S. 540 5 S. Ct. 255, 28 L. Ed. 770.

In re Ah Lung (C. C. Cal. 1883), 18 F. 28, 29.

The Court has also held:

"A treaty may supersede a prior Act of Congress, and an Act of Congress may supersede a prior treaty."

Cherokee Tobacco (Ark. 1870), 11 Wall. 621, 20 L. Ed. 227.

See also:

Alvarez y. Sanchez v. *U. S.* (Ct. Cl. 1910), 216 U. S. 167, 30 S. Ct. 361, 54 L. Ed. 432.

Again speaking of the force and effect of a treaty of the United States, it has been said:

"A treaty, assuming it to be made conformably to the Constitution in substance and form, has the effect

of repealing all preceding federal law in conflict with it, whether in written, as law of nations, or admiralty and common law, or written, as Acts of Congress. Copyright Convention with Great Britain (1854), 6 Op. Atty. Gen. 293."

The Supreme Court of the United States also said:

"When treaty rights are of a nature to be enforced in a court of justice, that court resorts to the treaty for a rule of decision for the case before it as it would to a statute. Head Money Cases, (N. Y. 1884) 112 U. S. 598, 5 S. Ct. 247, 28 L. Ed. 798, affirming (C. C. 1883) 18 F. 135. See also In re Metzger (D. C. N. Y. 1847) 5 N. Y. Leg. Obs. 83, 17 Fed. Cas. No. 9511."

One of the most conclusive cases on the question involved in this case was the case of *Arthur Manchester* v. *The Commonwealth of Massachusetts,* which originated in the State Courts of Massachusetts, and from there by appeal went to the Supreme Court of the United States, and is reported in U. S. Supreme Court Reports, Vol. 139 at page 240, 6 Fed. 159, in which case the Court said:

"Within what are recognized by the law of nations as the territorial limits of States, a state can define its boundaries on the sea and the boundaries of its counties; Massachusetts can include Buzzard's Bay within the limits of its counties."

The Court further said:

"We think it must be regarded as established that, as between nations, the minimum limit of the territorial jurisdiction of a nation over tidewaters is a marine league from its coast; that bays wholly within its territory not exceeding two marine leagues in width at the mouth are within this limit."

The Court further said:

"A state can control fishing to the extent of one marine league from its shores."

"Within what is recognized by the law of nations for a State's territorial limits, the State can regulate its boundaries."

Manchester *v.* Commonwealth, 139 U. S. 240, 258, 35 L. Ed. 159, 11 S. Ct. 559.

The Court held in this case conclusively that the State has the right of control of tide-waters only one marine league from shore and could not even control Buzzard's Bay lying wholly within the limits of the State except for the fact that the mouth of Buzzard's Bay was less than two marine leagues in width.

The same holding was made with reference to Bering Sea in the following language:

"An award restricting to a marine league exclusive jurisdiction over Bering Sea was held binding."

The La Ninfa, 75 Fed. 513, 21 C. C. A. 434.

It was also held:

"The jurisdiction of a nation extends into the sea one marine league."

The Marjorie Bachman, 4 F. (2d) 405;
U. S. *v.* Bevans, 3 Wheaton 336, 4 L. Ed. 404.

Mr. Justice Fields speaking for the Court said:

"All the writers upon public law agree that every nation has exclusive jurisdiction to the distance of a cannon shot, or marine league, over the waters adjacent to its shores, (Bynk. Qu. Pub. Uris. 61; 1 Azuni, (Mar. Law) 204; Par. 15; Id. p. 185, par. 4) and this doctrine has been recognized by the Supreme Court of the United States. (Church *v.* Hubbart) 2 Cranch (6 U. S.) 187, 231. Indeed such waters are considered as a part of the territory of the sovereign."

The Ann, 1 Fed. Cas. No. 397.

The Court has also said:

"Various meanings are sought to be attributed to the term 'territory' in the phrase, 'The United States

and all territory subject to the jurisdiction thereof'. We are of the opinion that it means the regional areas —of land and adjacent waters—over which the United States claims and exercises dominion and control as a sovereign power. The immediate context and the purport of the entire section, show that the term is used in a physical, and not a metaphorical, sense—that it refers to areas or districts having fixity of location and recognized boundaries. See United States *v.* Bevans, 3 Wheat. 336, 339, 4 L. Ed. 404, 417."

"It is now settled in the United States and recognized elsewhere that the territory subject to its jurisdiction includes the land areas under its dominion and control, the ports, harbors, bays, and other inclosed arms of the sea along its coast, and a marginal belt of the sea extending from the coast line outward a marine league, or three geographical miles. Church *v.* Hubbart, 2 Cranch. 187, 234, 2 L. Ed. 249, 264; The Ann, 1 Gall. 61, Fed. Cas. No. 397; United States *v.* Smiley, 6 Sawy. 640, Fed. Cas. No. 16317; Manchester *v.* Massachusetts, 139 U. S. 240, 257, 258, 35 L. Ed. 159, 164, 11 Sup. Ct. Rep. 559; Louisiana *v.* Mississippi, 202 U. S. 1, 52, 50 L. Ed. 913, 931, 26 Sup. Ct. Rep. 408, 571; 1 Kent, Com. 12th Ed. 29; 1 Moore, (123) International Law Dig. par. 145; 1 Hyde International Law, par. 141, 142, 154; Wilson, International Law, 8th ed. par. 54; Westlake, International Law, 2nd ed. pp. 187, et seq.; Wheaton, International, 5th Eng. ed. (Phillipson) p. 282; 1 Oppenheim, International Law, 3d ed. par. 185-189, 252. This, we hold, is the territory which the Amendment designates as its field of operation; and the designation is not of a part of this territory but of 'all' of it."

Cunard S. S. Co. *v.* Mellon, 262 U. S. 100, (1923).

We are familiar with the case of *Arch, et al.* v. *United States,* decided by this Court May 12, 1926, being Case No. 4498 and involving a libel growing out of a violation of the customs duty. The Court sustained the seizure of the vessel without the procuring of a search warrant for the reason

that the parties had been guilty of a violation of the Tariff Act of September 21, 1922, paragraph 581. This Court did, however, in the opinion, say:

> "If her intention had been only to anchor without the jurisdictional of limits and there to sell to chance customers, the case presented would have been different." Burns *v.* U. S., 296 Fed. 468; Romano *v.* U. S., 9th F. (2d) 522.

In this case the action was taken against the vessel by the United States Government for the purpose of enforcing and protecting the revenues of the Government and under an Act of Congress and also under the International Law, which has recognized the rights of nations for the protection of its revenues and to prevent smuggling, to search vessels at a distance beyond the territorial waters of the nation.

The United States Court has held:

> "A state bordering on the sea may extend its borders to length of one marine league from low-water mark into the sea. U. S. *v.* New Orleans Meadows Imp. Co., 173 Fed. 426."

W. B. Dickenson, Sr.,
W. B. Dickenson, Jr.,
Counsel for Appellant.

EXHIBIT "A".

IN THE SUPREME COURT OF FLORIDA, JUNE TERM, A. D. 1940, EN BANC.

PINELLAS COUNTY.

LAMBIRIS SKIRIOTES, *Petitioner,*

vs.

THE STATE OF FLORIDA, *Respondent.*

Opinion Filed September 6, 1940.

Certiorari to Circuit Court, Pinellas County, John U. Bird, Judge.

W. B. Dickenson, Dickenson & Dickenson, for Petitioner; George Couper Gibbs, Attorney General, William Fisher, Jr., Assistant Attorney General, for Respondent.

TERRELL, *C. J.*:

Lambiris Skiriotes was tried and convicted in the County Court of Pinellas County for using diving apparatus in the taking of sponge from the Gulf of Mexico contrary to Section 8087, Compiled General Laws of 1927. His conviction was on appeal affirmed by the Circuit Court so he petitions this Court to review it by certiorari.

Three questions are urged for determination but all turn on that of whether the provisions of the Constitution of 1885 fixing the western boundary of Florida at three marine leagues (nine nautical miles) from the shore is violative of the Constitution of the United States, including treaties and executive orders made pursuant to the Federal Constitution.

There is no dispute about the facts. It is admitted that the alleged offense was committed within the State if the boundary as fixed by the Constitution of 1885 is controlling. The case was tried by the Court on waiver of jury and stipulation as to material facts. Petitioner contends that the marine boundary of the State is fixed by international law at one marine league from shore and that the offense was committed beyond this limit.

By the tenth amendment to the Federal Constitution the States reserved all rights and powers which they did not in terms surrender to the United States. In Manchester *v.* Massachusetts, 139 U. S. 240, 11 Sup. Ct. 559, 35 L. Ed. 159, the Supreme Court approved the doctrine that a State may determine its own marine boundaries provided it does not exceed the limits recognized by the law of nations. For the purpose of fixing marine boundaries in this country, the states may be considered as nations. As a practical matter, the marine boundary of a State may be fixed by the latter with the approval of Congress and may not be limited to one marine league.

At the time of the Revolution, each state was an independent nation and determined its marine boundary. Such was the practice of each state subsequently admitted to the Union. In the absence of affirmative action on this point the Supreme Court of the United States has generally assumed the sovereignty of the state to extend one marine league from shore. This distance was fixed because it was at the time considered to be the range of a cannon shot and that the state should be permitted to protect that distance from its shore. This distance has in many instances been increased within reason and we find nothing in the law of nations to forbid it.

The western boundary of Florida was fixed at three marine leagues from the main land by the Constitution of 1868. In June of the same year but after the adoption of the Constitution, Congress passed an act admitting Florida and other southern states to the Union, the said act making reference to the Constitution of 1868. The Constitution of 1885 repeated the boundary defined in the Constitution of 1868 and the latter has continued to be the boundary to the present.

The petitioner contends that the act of Congress readmitting Florida to the Union did not constitute an approval of the boundary but that if it did, such approval was subsequently withdrawn by treaties entered into between the United States and certain foreign countries including executive orders made by the President and the Cabinet, all of which referred to the boundary of the United States as three marine leagues from the mainland.

It is true that by international law, one marine league is generally considered the distance over which a nation has exclusive jurisdiction and such waters are considered as under the jurisdiction of the sovereign but it has never been determined that such limits were final. Treaties and legislative acts passed pursuant to the Constitution are clothed with equal dignity and by the Constitution are made the Supreme Law of the land. This of course presupposes that they relate to the same subject. The State of Florida was not a party to any of the treaties or executive orders relied on by petitioner and none of them had any reference to the boundary of Florida. Such as they did connote it was one marine league from shore.

Petitioner also contends that if Florida can extend its boundaries to three marine leagues from shore, then there is no limit to the extent they may be extended. The answer to this question is that such extensions must be approved by Congress and when done, its approval is final. We do not infer that any extension would be approved by Congress. Certainly no unreasonable extension or one that would transcend international law would be approved. In Jones *v.* United States, 137 U. S. 202, 11 Sup. Ct. 80, 34 L. Ed. 691, the Supreme Court held that the question of who is the sovereign de jure or de facto is a political rather than a judicial question. The Courts are bound by the legislative determination of such questions.

In support of this position, it may be pointed out that the boundaries of the sister states of Alabama, Mississippi, Louisiana, and Texas were fixed by their respective legislatures at the time of admission, some at three marine leagues from the shore, some at six and Louisiana at nine, yet all said boundaries were approved by acts of Congress in similar manner as that approving the boundary of Florida and some of them have been on the books more than one hundred years. A complete discussion of the boundary of Louisiana and Mississippi is found in Louisiana *v.* Mississippi, 202 U. S. 1, 26 Sup. Ct. 408, 50 L. Ed. 913.

Both parties to this cause rely on Manchester *v.* Massachusetts, and Louisiana *v.* Mississippi, *supra*, to support their contention. The direct question presented here was not raised in either one of these cases. In the former case

the Court held that as between nations, the minimum limit of the territorial jurisdiction of a nation over tide waters is a marine league from the coast and that a State may define its marine boundaries within these limits.

In the latter case, it was held that as between states long acquiescence in the assertion of a particular boundary and the exercise of sovereignty over the territory within it should be accepted as conclusive whatever the international rule may be in respect of acquisition by prescription of large tracts of country claimed by two states.

Since one marine league is considered by this line of cases as the "minimum" width of the marine belt and no maximum is prescribed all of the states referred to have gone on the theory that circumstances warranted a widening of their marine belt and have done so but in keeping with and to the extent that the range of artillery has been lengthened. If the range of a cannon shot controlled the width of the marine belt in the first instance, certainly it may be widened with length of the range. This procedure has been long acquiesced in was approved by Congress and is not prohibited by the Constitution. We are not convinced that it should be disturbed on the showing made.

From the decided cases, it appears that any state by approval of Congress has a right to fix its marine boundaries and that if fixed in reason, such right has never been questioned by Congress by any other nation or citizen thereof. Long acquiescence in a boundary so fixed concludes the question. Indiana *v.* Kentucky, 136 U. S. 479, 10 Sup. Ct. 1051, 34 L. Ed. 329; Maryland *v.* West Virginia, 217 U. S. 1, 30 Sup. Ct. 268, 54 L. Ed. 645; Pope *v.* Blanton, 10 Fed. Supp. 18; Lipscomb *v.* Gialourakis, 101 Fla. 1130, 133 So. 104; Cunningham *v.* Skiriotes, 101 F. (2d) 635.

It follows that the western boundary of Florida as defined in its Constitution at three marine leagues from shore is conclusive and being so by the agreed statement of facts, petitioner was guilty of violating Section 8087, Compiled General Laws of 1927, so the writ of certiorari is denied.

It is so ordered.

WHITFIELD, BROWN, BUFORD, CHAPMAN and THOMAS, J. J., concur.

EXHIBIT "B",

4449 Co. Cr.

STATE OF FLORIDA

vs.

LAMBIRIS SKIRIOTES.

Violation of Sec. 8087 C. G. L. of Florida Prohibiting the Use of Diving Apparatus in Taking Sponge.

The defendant, Lambiris Skiriotes, upon being caused to stand before the bar in custody of the Sheriff, was asked by the Court if he had anything to say why the sentence of the law should not now be pronounced upon him, and he answering nothing in bar or preclusion thereof, the Judge pronounced the following sentence, towit:

"You, Lambiris Skiriotes, having entered a plea of Nolle Contendre to the charges of violation of Section 8087 of the Compiled General Laws of Florida prohibiting the use of diving apparatus in taking sponge, the Court adjudges you to be guilty.

It is therefore the sentence of the law and the judgment and order of this Court that you, Lambiris Skiriotes, for your said offense for which you now stand convicted shall serve two (2) days in the County Jail of Pinellas County, Florida; It is further considered and ordered that you, Lambiris Skiriotes, shall also pay a fine of Fifty ($50.00) Dollars.

Thereupon the defendant was remanded to the custody of the Sheriff."

EXHIBIT "C".

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR PINELLAS COUNTY.

Min. Ct. Ct. 28, Page 3.

LAMBIRIS SKIRIOTES, *Appellant*,

vs.

THE STATE OF FLORIDA, *Appellee*.

Appeal from the ~~County Court of Pi~~nellas County, ~~F~~lorida.

This cause is before this Court on appeal from that certain judgment of conviction of the Appellant entered by the Judge of the County Court, in and for Pinellas County, Florida, on the 27th day of January, A. D. 1940, wherein and whereby the said Judge, who by stipulation acted without the intervention of a jury, found the defendant, Lambiris Skiriotes, guilty as charged in the Information.

And also on appeal from the Final Judgment and sentence of the defendant by the said Judge of the County Court, in and for Pinellas County, Florida, set forth at page 32 of the transcript, under which judgment and sentence the said Appellant, Lambiris Skiriotes, was by the Judge of the County Court of Pinellas County, Florida, sentenced to serve two days in the county jail of Pinellas County, Florida, and in addition thereto pay a fine of Fifty ($50.00) Dollars.

This Court, having inspected the record herein, finds, that this Court has jurisdiction of the parties and the subject matter and that the Appellant was convicted and sentenced under an Information filed by the Prosecuting Attorney for Pinellas County, Florida, under the provisions of Section 8087 of the Compiled General Laws of Florida, the said Section being a carrying forward of Section 4 of Chapter 7389, Laws of Florida of 1917.

The Court further finds that the said statute does not define what are and constitute the "territorial waters of

the State of Florida", but that the Constitution of 1885, which is the present constitution of the State of Florida, undertakes to define what constitutes the territorial limits of the State of Florida and that the constitutional provision places the western limit of the State of Florida off the West shore of Pinellas County, Florida, at a line drawn parallel with mean low tide on the shore line of Pinellas County and nine nautical miles or three marine leagues from shore; that this boundary, fixed by the Constitution, would include within the territorial waters of the State of Florida and within the territorial waters of Pinellas County, Florida, a strip of water lying parallel to and West of mean low tide on the shore line of Pinellas County, Florida, nine nautical miles wide extending East and West.

The Court further finds that under the Agreed Stipulation of Facts, upon which Stipulation the County Judge based his findings and conclusion, verdict and judgment, conclusively establishes the fact without dispute that the Appellant was arrested at a point two marine leagues from mean low tide on the shore line of Pinellas County, Florida, and two marine leagues from the nearest point of land of Pinellas County, Florida, while diving for commercial sponge by the use of ordinary diving apparatus commonly used by deep-sea divers for the purpose of taking or catching commercial sponges from the floor of the Gulf of Mexico, and at the time of his arrest was in the act of and did take commercial sponges at that time and place from the floor of the Gulf of Mexico by the use of said diving apparatus.

The Court further finds that the appellant assigns the following grounds of appeal from the judgment of conviction and sentence of appellant by the said Judge of the County Court in and for Pinellas County, Florida, towit:

1. The Court erred in overruling and denying the defendant's motion to quash the Information filed against him in this cause.

2. The Court erred in holding and determining that the jurisdiction of the Criminal Courts of the State of Florida extends westward from mean low tide on the mainland and

adjacent islands of the State of Florida a distance of three marine leagues or nine nautical miles.

3. The Court erred in holding that the boundaries of the State of Florida, as fixed by the Constitution of Florida of 1885, extending three marine leagues West from mean low tide on the West Coast of Florida, did not violate Section One of Article 14 of the Constitution of the United States of America, originally adopted as the Fourteenth Amendment to the Constitution of the United States of America.

4. The Court erred in holding and determining that the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida of 1885, were not violative of Article 6 of the Constitution of the United States of America.

5. The Court erred in holding that the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida of 1885, were valid and not in violation of Article 2, Section 2, Clause 2, of the Constitution of the United States of America.

6. The Court erred in holding that the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida of 1885, were valid and enforceable and not in violation of Article One, Section 10, Paragraph One of the Constitution of the United States of America.

7. The Court erred in holding that the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida of 1885, were valid and not in violation of Article One, Section 10, Paragraph 3 of the Constitution of the United States of America.

8. The Court erred in holding that the law of the State of Florida under which the Information was filed against the defendant in this cause, and which law is based upon the boundaries of the State of Florida as established by the Constitution of the State of Florida of 1885 was not in violation of the various treaties made and entered into by the United States of America, each of which is specifically set forth in the Motion to Quash the Indictment.

9. The Court erred in holding that the law under which the Information in this cause was filed against this defendant and which said law is based upon and of necessity relies upon the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida of 1885, is valid and not in violation of the decisions of the Political and Executive Departments of the Federal Government as to what is and constitutes the extreme limits of the territorial boundaries of the United States of America, as will be more fully shown by reference to the Seventh Ground of the Motion to Quash the Information.

10. The Court erred in holding and determining under the evidence in this cause submitted to the Court, in an agreed statement of facts, the same being filed in this cause, that the alleged offense charged in the Information against the defendant under the agreed statement of facts occurred, was committed, done and performed within the territorial jurisdiction of the Criminal Courts of the State of Florida.

11. The court erred, under the facts shown by this record, in holding and determining that this Court had jurisdiction to try and determine the charge in the Information.

12. The Court erred in his determination and holding that the territorial limits of the State of Florida extend westward from mean low tide on the shore line of the State of Florida and adjacent islands thereto a distance of three marine leagues into the Gulf of Mexico.

13. The Court erred in its order overruling and denying the Motion for New Trial upon each of the grounds therein set forth.

14. The Court erred in his order overruling and denying the defendant's Motion in Arrest of Judgment and each of the grounds set forth in the said motion.

The Court, having inspected the record of proceedings and the evidence contained therein, and the law with relation thereto, is of the opinion that the verdict and final judgment and sentence of the Appellant by the lower Court should be sustained for the following reasons:

This Court is of the opinion and so holds that the jurisdiction of the Criminal Courts of the State of Florida does extend nine nautical miles or three marine leagues from mean low tide on the Coast line of the State of Florida westward into the Gulf of Mexico, notwithstanding the various provisions of the Constitution of the United States set forth in the Grounds of Appeal.

2. The Court is of the opinion and so holds that the boundaries of the State of Florida on the West shore of the State of Florida as fixed by the Constitution of the State of Florida of 1885 extending the western boundary of the State of Florida three marine leagues from mean low tide on the western coast of the State of Florida and adjacent islands is valid and binding on the courts of the State of Florida, notwithstanding the following provisions of the Constitution of the United States, to wit: Article 6, Article 2, Section 2, Clause 2; Article 1, Section 10, Paragraph 1; Article 1, Section 10, paragraph 3.

3. This Court is further of the opinion and holds that the boundary line fixed as the western boundary of the State of Florida by the Constitution of 1885 is valid and binding upon the Criminal Courts of the State of Florida, notwithstanding the various treaties entered into with foreign countries set forth in the record and which said treaties of the United States were entered into pursuant to the authority of the Constitution of the United Sates, and each and all of the same fix the international boundary at one marine league from mean low tide on the shore line of the mainland and adjacent islands.

4. The Court is further of the opinion and holds that the western boundary line of the State of Florida as fixed by the Constitution of the State of Florida of 1885 is valid and binding on the Criminal Courts of the State of Florida, notwithstanding the decisions and political opinions of the Executive Department of the Federal Government announced since 1794 down to the present time to the effect that the extreme limits of the territorial boundaries of the United States of America is and shall be a line parallel with and one marine league from mean low tide on the shore

of the mainland and adjacent islands of the United States, which said line is and constitutes the recognized international boundary line.

WHEREFORE the judgment of conviction of the appellant by the County Court of Pinellas County, Florida, and the sentence imposed on the appellant by the County Court of Pinellas County, Florida, are each hereby affirmed.

Done and Ordered at Clearwater, Pinellas County, Florida, this 30th day of April, A. D. 1940.

JOHN U. BIRD,
Judge of the Said Court.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 658

LAMBIRIS SKIRIOTES,

Appellant,

vs.

THE STATE OF FLORIDA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA.

BRIEF OF APPELLANT.

W. B. DICKENSON,
W. B. DICKENSON, JR.,
Counsel for Appellant.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 658

LAMBIRIS SKIRIOTES,

Appellant,

vs.

THE STATE OF FLORIDA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA.

BRIEF OF APPELLANT.

Concised Statement of the Grounds on Which the Jurisdiction of This Court is Invoked.

The jurisdiction of this Court is invoked in this cause under the provisions of the following Acts of Congress authorizing proceedings of this nature: The Act of Congress of January 31, 1928, being Chapter 14, 45 Stat. 54, he was under the provisions of the Act of Congress of February 13, 1925, being Chapter 229, 43 Stat. 936, entitled to a writ of error, under the provisions of Section

237, Paragraph A, in the Supreme Court of the United States in this cause; said section and paragraph providing:

> "A final judgment or decree in any suit in the highest court of the State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity, or where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court in court in which it was removed by the writ."

The Act of Congress of January 31, 1928, being Chapter 14, 45 Stat. 54, provides in Section One, as follows:

> "That the writ of error in cases, civil and criminal, is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal."

The Act of Congress of April 26, 1928, being Chapter 440, 45 Stat. 466, Section 2, provides:

> "That the Statute regulating the right to writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and invoking such relief, including the provisions relating to costs, supersedeas and mandate shall be applicable to the appeal which the preceding section substitutes for a writ of error."

This appeal is from a final judgment of the court of last resort in Florida, to-wit, from the final judgment of the

Supreme Court of the State of Florida, (Transcript of Record, pages 36 to 40).

Briefly stated the facts are: That on January 20, 1940, Henry S. Baynard, Prosecuting Attorney of the County of Pinellas, State of Florida, filed an Information (Transcript of Record, pages 10 and 11) charging that the Appellant on the 8th day of March, 1938, knowingly, wilfully and unlawfully maintained and used for the purpose of catching and taking commercial sponges from the Gulf of Mexico within the territorial limits of the State of Florida, to-wit, at a point more than one marine league from mean low tide on the shore line of the State of Florida and Southwest of Anclote Key and Northwest of Hog Island and within three marine leagues of mean low tide on the West shore line of the State of Florida at a point approximately two marine leagues from mean low tide on the West shore line of the State of Florida and within the territorial limits of the County of Pinellas, a diving suit, helmet and other apparatus used by deep-sea divers, and did then and there catch or take commercial sponges from the Gulf of Mexico in violation of the provisions of Section 4 of Chapter 7389, Laws of Florida, enacted in 1917, and re-enacted as Section 8087, Compiled General Laws of Florida, adopted in 1927.

To this Information the Appellant filed a Motion to Quash (Transcript of Record, pages 11 to 18 inclusive) upon the following grounds briefly stated being:

1. That the Information fails to charge any offense against any valid statute of the State of Florida because the place at which the crime was alleged to have been committed was outside of and beyond the territorial limits of the State of Florida, which limits could not extend outside of the territorial limits of the United States; that the statute under which the Information was filed is invalid and un-

enforceable by reason of the fact that it is violative of the provisions of the Constitution of the United States, to-wit, Section One, Article 14, originally adopted as the Fourteenth Amendment of the Constitution of the United States. The pertinent part of this section provides:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States * * * nor deny to any person within its jurisdiction the equal protection of the laws."

2. That the statute under which the Appellant was prosecuted violates the provisions of Article 6 of the Constitution of the United States; the pertinent part of Article 6 being found in sub-paragraph 2 in the following language:

> "This Constitution, and the laws of the United States, which shall be made in pursuance thereof; and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."

3. That the said Information filed against the Appellant is violative of Article One, Section 10, Paragraph One of the Constitution of the United States; the pertinent part of this section of the Constitution provides:

> "No state shall enter into any treaty, alliance or confederation."

It is therefore apparent that the State could not acquire territory beyond the limits of the United States.

4. That the law of the State of Florida under which the Appellant was being prosecuted violates Article 2, Section 2, Clause 2 of the Constitution of the United States; the pertinent part of this constitutional provision is:

"He (the President) shall have power, by and with the advice and consent of the Senate, to make treaties."

This provision of the Constitution precludes the State from that power.

5. The law of the State of Florida under which the appellant was being prosecuted is violative of Article One, Section 10, Paragraph 3 of the Constitution of the United States; the pertinent part of this section of the Constitution is:

"No state shall * * * enter into any agreement or contract with another state or with a foreign power."

This section precludes the State from acquiring property or territory outside of the United States.

6. The law of the State of Florida and the prosecution of this appellant is violative of the treaty provisions of the United States Constitution in that it is violative of the treaty provisions in respect of the provisions of the Treaty of Amity and Settlement between the United States of America and Spain under which the United States acquired title to the State of Florida, and is also violative of the sixteen subsequent treaties entered into by the United States of America and various foreign powers set forth in the Transcript of Record at page 12 to 16 inclusive. Each of the said treaties in express language fixing the international boundary of the United States of America and reasserting the same to be no more than one marine league from mean low tide on the mainland or adjacent islands (Agreed Statement of Facts, Transcript of Records, pages 12 and 13).

7. That the law under which the appellant was being prosecuted is void because it violates the decisions of the Political and Executive Departments of the Federal Government on the question of what is and constitutes the ex-

treme limits of the territorial boundaries of the United States, as shown by the Report of the 1929 Conference at Geneva of the League of Nations, issued by the Publication Department of the League of Nations "Conference for the Codification of International Law." It was shown that this volume was offered in evidence and was before the Trial Court showing that beginning on November 8, 1793, and continuing to and including January 23, 1904, the Executive and State Departments have insisted upon adherence to the fact that the international boundary of the United States could be no more than one marine league from mean low tide on the shore line (Transcript of Record, pages 16 to 18 inclusive).

The Motion to Quash the Indictment was overruled and denied (Transcript of Record, page 18).

The cause was tried on January 26, 1940, upon the Agreed Statement of Facts (Transcript of Record, pages 18 to 27 inclusive). This resulted in conviction in the County Court of Pinellas County (Transcript of Record, pages 31 and 32). Appeal was duly perfected from that court to the Circuit Court of the Sixth Judicial Circuit of Florida, in and for Pinellas County, and upon final hearing and determination in that court, which is an intermediate Appellate Court under the laws of Florida, the said intermediate Appellate Court did affirm the judgment and sentence of the appeal from the said County Court, which opinion and judgment of the said Circuit Court of the Sixth Judicial Circuit of Florida affirmed the judgment of the County Court of Pinellas County, Florida (Transcript of Record, pages 3 to 8 inclusive).

An appeal from this order and judgment of the said Circuit Court was perfected to the Supreme Court of the State of Florida, which is the court of final jurisdiction under the Constitution and laws of the State of Florida, and on September 6, 1940, the opinion of the Supreme Court of

Florida was filed (Transcript of Record, pages 36 to 40 inclusive); by which opinion the Supreme Court of Florida affirmed the judgment of the said Circuit Court of the Sixth Judicial Circuit of Florida, in and for Pinellas County, and remanded the appellant, Lambiris Skiriotes, to custody.

From this judgment of the Supreme Court of Florida this appeal was entered under the provisions of the statute of the United States referred to, and the cause is now pending before this Court for review of that judgment of the Supreme Court of the State of Florida.

While it is true that the rights of this one man, on the face of it, are involved in the litigation, it is also true, as set forth in the Statement as to Jurisdiction filed in this cause, that there are some four thousand citizens and residents of Pinellas County, Florida, who are vitally interested and greatly affected by the result of this cause.

Statement of the Case.

The Appellant, Lambiris Skiriotes, was on the 8th day of March, 1938, arrested by the Sheriff of Pinellas County, Florida, upon a charge of violating Section 4, Chapter 7389, Laws of Florida, enacted in 1917, and renacted as Section 8087, Compiled General Laws of Florida, adopted in 1927, in that he was fishing for sponge six miles from mean low tide in the Gulf of Mexico off the coast of Pinellas County, Florida, and in doing so was using a regular sponge diving suit, helmet and other apparatus, and when arrested was in the act of catching or taking commercial sponges from the Gulf of Mexico at that point.

On the 20th day of January, 1940, Henry S. Baynard, Prosecuting Attorney of the County of Pinellas, State of Florida, filed an Information (Transcript of Record, pages 10 and 11) so charging the defendant.

Thereafter the defendant filed his Motion to Quash the Information upon seven grounds alleging and raising the

question of numerous constitutional rights of the defendant being violated, as set forth in the Motion to Quash (Transcript, pages 11 to 18 inclusive). Upon presentation and argument of the said Motion, the Honorable Jack F. White, Judge of the County Court of Pinellas County, Florida, did overrule and deny the said Motion (Transcript of Record, page 18).

There being no dispute as to the facts between the State of Florida on the one hand and the defendant on the other, a stipulation as to the facts was entered into in open court (Transcript of Record, pages 18 to 27 inclusive).

A jury trial was waived by the State and the defendant, and the cause submitted to the Court under a stipulation of facts (Transcript of Record, pages 18 and 19).

Under the stipulation of facts it was agreed as follows:

That at the time of his arrest Lambiris Skiriotes, the defendant, was using a diver's helmet and suit and other diving equipment and was engaged in taking commercial sponges from the floor of the Gulf of Mexico at the time of his arrest at a point approximately six miles from mean low tide on the mainland and six miles from mean low tide on any adjacent island of the State of Florida.

It was further stipulated that the said point was, according to the territorial boundaries of the State of Florida, as fixed by the Constitution of the State of Florida of 1885, within the boundaries as so fixed (Transcript of Record, page 20).

It was further stipulated that under the treaty entered into between the United States of America and Spain, being designated a Treaty of Amity, Settlement and Limits, which was signed at Washington, D. C., February 27, 1819, and being the treaty under which the United States acquired Florida from Spain, that said treaty conveyed to the United States only the uplands of the peninsula of

Florida together with the islands lying adjacent thereto, that this treaty did not convey any part of the waters surrounding the State of Florida or the islands adjacent thereto below mean low tide (Transcript of Record, page 20).

It was further agreed that the other sixteen treaties set forth in the Stipulation of Facts and which treaties were entered into by the United States of America and various foreign countries therein named, each in express terms fixed the international boundary of the United States at three marine miles or one marine league measured from low water mark on the mainland and each declared the remainder of the seas without jurisdiction of the United States and constituting the high seas (Transcript of Record, pages 20 to 23 inclusive).

It was further stipulated that the defendant offer in evidence extracts taken from "League of Nations Conference for the Codification of International Law, Volume II" with reference to the establishment of the international boundary of the United States, beginning with the letter of Mr. Jefferson, Secretary of State, on November 8, 1793, and continuing with the diplomatic correspondence to January 23, 1904, letter written by Mr. Chief Justice Charles E. Hughes, Supreme Court of the United States, who was then Secretary of State (Transcript of Record, pages 23 to 27 inclusive).

Lambiris Skirotes, having entered pleas, was placed on trial on the above stated facts (Transcript of Record, page 27). After argument of counsel and presentation of authorities and consideration by the Court of the various treaties presented to him as well as the evidence offered and filed before him of the diplomatic correspondence of the State Department and the Executive Department, Judge Jack F. White, Judge of said Court, on the 27th day of

January, 1940, entered his judgment and verdict finding the defendant guilty as charged in the Information and did reserve the right to pass sentence after presentation and argument of Motion for New Trial.

Within four days the defendant filed his Motion to Set Aside the Verdict and Grant a New Trial upon the following grounds:

1. Because the Information charges the offense to have been committed on the high seas beyond the jurisdiction of the court.

2. Because the evidence shows conclusively and without dispute that if an offense was committed it was committed on the high seas beyond the territorial limits of Pinellas County, Florida, and outside of the jurisdiction of the court.

3. Because the evidence conclusively shows without controversy that if the crime was committed at all it was committed on the high seas beyond the jurisdiction of any court of the State of Florida (Transcript of Record, pages 28 and 29).

The defendant at the same time filed his Motion in Arrest of Judgment alleging the same grounds (Transcript of Record, pages 29 and 30).

The court overruled and denied the Motion for New Trial and Motion in Arrest of Judgment (Transcript of Record, pages 30 and 31).

The court thereupon passed his sentence and entered judgment against the defendant imposing a fine and in addition a jail sentence (Transcript of Record, pages 31 and 32).

The defendant thereupon filed his Entry of Appeal and Grounds of Appeal to the Circuit Court of the Sixth Judicial Circuit of Florida, in and for Pinellas County, the same

being an intermediate Appellate Court (Transcript of Record, pages 33 to 35 inclusive), his specific grounds of appeal covering the questions before this Court for consideration are for the sake of brevity not here restated.

The cause came on to be heard before the Honorable John U. Bird, one of the Judges of the Circuit Court of the Sixth Judicial Circuit of Florida, in and for Pinellas County, and the said Judge, upon consideration of the transcript of record, briefs of counsel and hearing of oral argument, on the 30th day of April, 1940, did enter and render his judgment (Transcript of Record, pages 3 to 8 inclusive) affirming the judgment of the County Court.

Thereupon the defendant, Lambiris Skiriotes, applied to the Supreme Court of the State of Florida for a Writ of Certiorari transferring the cause to that Court for final appellate jurisdiction (Transcript of Record, pages 1 to 3 inclusive).

This proceeding is authorized by Section 5 of Article 5 of the Constitution of Florida in the following language:

> "The Court shall have the power to issue writs of mandamus, certiorari, prohibition, quo warranto, habeas corpus, and all writs necessary or proper to the complete exercise of its jurisdiction."

The Supreme Court of Florida transferred the cause to that Court by Certiorari, and upon consideration thereof and after oral argument, the Supreme Court of Florida, on the 6th day of September, 1940, entered its judgment sustaining the conviction of the defendant and holding that the Western boundaries of the State of Florida as defined by the Constitution of Florida is fixed at three marine leagues from shore, and thereupon denied the Writ of Certiorari, which opinion appears in the Transcript of Record at pages 36 to 40 inclusive.

This judgment of the Supreme Court of Florida exhausts all remedial rights of the defendant under any provisions of the Constitution or laws of the State of Florida, and from this judgment the cause is before this Honorable Court for review.

Specification of Such of the Assigned Errors as are Intended to be Urged.

By reference to Transcript of Record, pages 59-61 inclusive, it will appear that there are four questions to be argued. The first question to be found at Transcript of Record, pages 59 and 60, is as follows:

> "Appellant insists that under the provisions of Section One of Article Fourteen of the Constitution of the United States and also under the provisions of Article Six of the Constitution of the United States and also under the provisions of Article Two, Section Two, Clause Two of the Constitution of the United States and also under the provisions of Article One, Section Ten, Clause One of the Constitution of the United States and also under the provisions of Article One, Section Ten, Clause Three of the Constitution of the United States, that the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida, adopted in 1885, and the law of the State of Florida under which the appellant was prosecuted are invalid, null and void for the (fol. 164) reason that no state of the Union may extend its boundaries beyond the international boundaries of the United States of America."

This question includes Assignment of Error numbered Three, Four, Five, Six, Seven (Tr. of Record, page 48) also Assignment of Error Fourteen (Tr. of Record, page 52).

The Second question (Tr. of Record, page 60) is as follows:

"The appellant insists that the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida of 1885, and the law under which this appellant was prosecuted are invalid and void for the reason that the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida, conflict with and violate the treaty provisions of the United States of America, as shown by the record."

This question covers and includes Assignments of Error number Eight (Tr. of Record, page 49) also Assignments of Error number Fifteen (Tr. of Record, page 53).

The treaties referred to being listed, Transcript of Record, pages 20-23 inclusive, and omitted here for brevity.

The Third question to be argued (Tr. of Record, page 60) is as follows:

"The appellant insists that even if the Court should consider that the question involved is a political question, that the record shows that under the political rulings of the Executive and State Departments of the Government it has been conclusively established that the international boundary of the United States of America has been definitely and permanently fixed at one marine league from mean low tide on the mainland and adjacent islands, and that, therefore, the Constitution of the State of Florida attempting to fix the boundaries of the State of Florida at nine nautical miles from mean low tide, and the law of the State of Florida under which the appellant was prosecuted are both null and void in that the same violate the rulings (fol. 165) and decisions of the Executive and State Departments of the United States Government."

This question includes Assignments of Error number Nine and number Sixteen.

The various diplomatic correspondence is not here repeated but will be found in Transcript of Record, page 49-51, inclusive.

The Fourth question (Tr. of Record, page 61) is as follows:

> "Appellant insists that the jurisdiction of the Criminal Courts of the State of Florida does not and cannot extend to a greater distance than one marine league from mean low tide on the mainland of the State of Florida and adjacent islands included within the territory of the State of Florida."

This question includes the grounds raised in Assignments of Error No. One (Tr. of Record, page 47),

Assignments of Error Number Two (Tr. of Record, page 48)

Assignments of Error Number Ten (Tr. of Record, page 51)

Assignments of Error Number Eleven (Tr. of Record, page 52)

Assignments of Error Number Twelve and Assignments of Error Number Thirteen (Transcript of Record, page 52)

Assignments of Error Number Seventeen (Tr. of Record, page 53).

ARGUMENT.

Brief Summary.

Lambiris Skiriotes, under the information, was charged with a violation of the provisions of Section 8087 of the Compiled General Laws of Florida, of 1927, which statute is in the following language:

> "8087. (5846.) Diving suits, helmets, etc., used by deep sea divers, prohibited.—It shall be unlawful for any person, persons, firm or corporation to maintain and use for the purpose of catching or taking commercial sponges from the Gulf of Mexico, or the Straits of Florida or other waters within the territorial limits of the State of Florida, diving suits, helmets or other apparatus used by deep sea divers.

> Anyone violating any of the provisions of this section shall be fined in the sum not exceeding five hundred dollars or by imprisonment not exceeding one year, or by both such fine and imprisonment."

The information against him (Tr. of Record, page 10) charges that he was taking sponge from the Gulf of Mexico at a point six nautical miles from mean low tide from the nearest point of the mainland of Florida and any adjacent island thereto, and also using for the purpose, diving suit, helmet and other apparatus used by deep-sea divers.

It will be observed that the quoted statute of the State of Florida does not define what are the territorial waters of the State of Florida. It is therefore, necessary to refer to the Constitution of the State of Florida, adopted in 1885 (which will be found in Volume Five of the Compiled General Laws of Florida, adopted in 1927, at page 4239-4466, inclusive) together with all amendments to the Constitution of Florida now enforced. Article One of the said Constitution fixing the boundaries of the State of Florida is in the following language:

> "The boundaries of the State of Florida shall be as follows: Commencing at the mouth of the River Perdido; from thence up the middle of said river to where it intersects the South boundary line of the State of Alabama, and the thirty-first degree of north latitude; thence due east to the Chattahoochee River; thence down the middle of said river to its confluence with the Flint River; thence straight to the head of the St. Mary's River; thence down the middle of said river to the Atlantic Ocean; thence southeastwardly along the coast to the edge of the Gulf Stream; thence southwestwardly along the edge of the Gulf Stream and Florida Reefs to, and including the Tortugas Islands; thence northeastwardly to a point three leagues from the mainland; thence northwestwardly three leagues from the land to a point west of the mouth of the Perdido River; thence to the place of beginning."

The appellant here admitted the act under date and at the place charged but denied that he was guilty of any crime or offense against any valid law of the State of Florida, and raising the question of the invalidity of the statute and of the constitutional provisions fixing the boundaries of the State of Florida on the Constitutional grounds as shown by Transcript of Record, Stipulation of Facts, page 19-27, inclusive.

The pertinent parts of the Constitution of the United States, the validity of which is asserted in this brief, are as follows: Section One, Article Fourteen, originally adopted as the Fourteenth Amendment to the Constitution of the United States is as follows:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States * * * nor deny to any person within its jurisdiction the equal protection of the laws."

Also Article 6, sub-paragraph 2 as follows:

> "This Constitution, and the laws of the United States, which shall be made in pursuance thereof; and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."

Also Article One, Section 10, Paragraph One as follows:

> "No state shall enter into any treaty, alliance or confederation."

Also Article 2, Section 2, Clause 2 as follows:

> "He (the President) shall have power by and with the advice and consent of the Senate, to make treaties."

Also Article One, Section 10, Paragraph 3 as follows:

> "No state shall * * * enter into any agreement or contract with another state or with a foreign power."

The defendant also properly raised, in order of the proceedings, the further question that the Constitution of Florida, fixing the boundaries of the State of Florida, and the Criminal Act of Legislature under which he was being prosecuted, were in conflict and violative of the treaty provisions of the United States, the said treaties were made and entered into under the authority of the Constitution of the United States as above shown.

The defendant also properly raised in all the courts of the State to which he made appeal, the further question that the boundaries of the State as fixed by the Constitution of the State of Florida, and the statute under which he was prosecuted in this cause, were violative and in conflict with the rulings of the State Department of the United States Government and also the Executive rulings and determination with respect to international boundaries beginning with 1793 and continuing to the present date. Therefore, if the question was a question to be settled by the Political Department of the Government, it had been settled adversely to the contention of the State of Florida.

There was raised, in all of the said courts, the further question that the criminal jurisdiction of the State Courts of the State of Florida could not extend outside of, or beyond, the international boundaries of the United States of America.

The Judge of the County Court of Pinellas County, Florida, convicted and sentenced the prisoner, Lambiris Skiriotes (Tr. of Record, pages 31-32).

On appeal to the Circuit Court of the Sixth Judicial Circuit of Florida, in and for Pinellas County, the Honorable John U. Bird, one of the Judges of the said Court, made and entered his judgment and order affirming the judgment and conviction of Lambiris Skiriotes in the County Court of Pinellas County, Florida (Tr. of Record, pages 3 to 8, inclusive).

On Certiorari to the Supreme Court of the State of Florida, which is the court of final appellate jurisdiction in Florida, the Supreme Court of the State of Florida affirmed the conviction of Lambiris Skiriotes in a written opinion filed September 6, 1940 (Tr. of Record, pages 36-40, inclusive).

The cause is before this Court in an appeal from the last mentioned judgment of the Supreme Court of Florida.

Question I.

(Tr. of Record, pages 59-61)

> "Appellant insists that under the provisions of Section One of Article Fourteen of the Constitution of the United States and also under the provisions of Article Six of the Constitution of the United States and also under the provisions of Article Two, Section Two, Clause Two of the Constitution of the United States and also under the provisions of Article One, Section Ten, Clause One of the Constitution of the United States and also under the provisions of Article One, Section Ten, Clause Three of the Constitution of the United States, that the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida, adopted in 1885, and the law of the State of Florida under which the appellant was prosecuted are invalid, null and void for the (fol. 164) reason that no state of the Union may extend its boundaries beyond the international boundaries of the United States of America."

This question includes Assignments of Error numbered Three, Five, Six, Seven (Tr. of Record, page 48) also Assignment of Error Fourteen (Tr. of Record, page 52).

This Court has said:

> "This Constitution is the supreme law of the land, and no Act of Congress is of any validity which does not rest on authority conferred by that instrument. U. S.

v. Germaine (Me. 1878) 99 U. S. 510, 25 L. Ed. 482. See also, Choctaw Indians (1870) 13 Op. Atty. Gen. 357; Trial of Andrew Johnson, 176."

The United States courts have also said:

"The Constitutional laws of the United States extend and are paramount over all of the territory of every State and cannot be annulled or abridged in any degree by any law of the State or Constitution of the State."

1 Sprague (U. S.) 602 30 Fed. Case No. 18273 Cited in Annotations of the Constitution, Article VI, Clause 2, U. S. C. A.

Gibbons v. *Ogden* (N. Y. 1824) 9 Wheat. 210, 6 L. Ed. 23.

In re Metzger (D. C. N. Y. 1847) 5 N. Y. Leg. Obs. 83, 17 Fed. Cas. 9511.

Turner v. *Baptist Missionary Union* (C. C. Mich. 1852) 5 McLean (U. S.) 344, 24 Fed. Case No. 14251.

El Paso etc. R. Co. v. *Guiterez* (Tex. 1909) 215 U. S. 87, 30 S. Ct. 21, 54 L. Ed. 106.

U. S. v. *Farris* (D. C. Cal. 1927) 19 Fed. (2d) 925.

This Court has also said:

"It must always be borne in mind that the Constitution, laws, and treaties of the United States are as much a part of the law of every state as its own local laws and constitution. This is a fundamental principle in our system of complex national polity. Hauenstein *v.* Lynham (Va. 1879) 100 U. S. 490, 25 L. Ed. 628."

The Supreme Court of the State of Florida has recognized this principle of law:

"The Constitution of the United States within its limited sphere is the supreme law of the land and it is the duty of all officials whether legislative, judicial, executive, administrative or ministerial to so perform every official act as not to violate the constitutional

provisions. Montgomery *v.* State (1908 55 Fla. 97, 45 So. 879."

It may be contended that the law of Florida under which the Appellant was prosecuted is not, on its face, repugnant to the Constitution, and it may also be said that it is seemingly within the power of the State to adopt. This question has been fully settled in the following cases by this Court, where this Court has said:

> "where a state law is assailed as repugnant to the Constitution of the United States, and on its face such Act is seemingly within the power of the state to adopt, but its necessary effect and operation is to usurp a power granted by the Constitution to the Government of the United States, it must follow, from the paramount nature of the Constitution of the United States, that the Act is void. In such a case the result of the test of necessary operation, and effect is to demonstrate the want of power, because of the controlling nature of the limitations imposed on the states by the Constitution of the United States." McCray *v.* U. S. (Ohio 1904) 195 U. S. 60, 24 S. Ct. 769, 49 L. Ed. 78, 1 Ann. Cas. 561. See also Northern Securities Co. *v.* U. S. (Minn. 1904) 193 U. S. 344, 24 S. Ct. 436, 48 L. Ed. 679; Ex parte Siebold (Md. 1879), 100 U. S. 398, 25 L. Ed. 717; New York *v.* Tax Com'rs. (N. Y. 1862), 2 Black 632, 17 L. Ed. 451; Cohen *v.* Virginia (Va. 1821) 6 Wheat. 381, 5 L. Ed. 257; M'Culloch *v.* Maryland (Md. 1819) 4 Wheat. 405, 406, 4 L. Ed. 579; Lick *v.* Faulkner (1864) 25 Cal. 418.

This Court also said in the leading case on this question:

> "Within what are recognized by the law of nations as the territorial limits of States, a state can define its boundaries on the sea and the boundaries of its counties; Massachusetts can include Buzzard's Bay within the limits of its counties."

The court further said:

> "We think it must be regarded as established that, as between nations, the minimum limit of the territorial jurisdiction of a nation over tidewaters is a marine league from its coast; that bays wholly within its territory not exceeding two marine leagues in width at the mouth are within this limit."

The court further said:

> "A state can control fishing to the extent of one marine league from its shores.
>
> Within what is recognized by the law of nations for a State's territorial limits, the State can regulate its boundaries."
>
> *Manchester* v. *Commonwealth*, 139 U. S. 240, 258. 35 L. Ed. 159 11 S. Ct. 559.

The court held in this case conclusively that the State has the right of control of tide-waters only one marine league from shore and could not even control Buzzards Bay lying wholly within the limits of the State except for the fact that the mouth of Buzzard's Bay was less than two marine leagues in width.

The same holding was made with reference to Bering Sea in the following language:

> "An award restricting to a marine league exclusive jurisdiction over Bering Sea was held binding."
>
> *The La Ninfa*, 75 Fed. 513 21 C. C. A. 434.

It was also held that:

> "The jurisdiction of a nation extends into the sea one marine league."
>
> *The Marjorie Bachman*, 4 Fed. (2d) 405;
> *U. S. Bevans*, 3 Wheaton 336, L. Ed. 404.

Mr. Justice Fields speaking for the court said:

"All the writers upon public law agree that every nation has exclusive jurisdiction to the distance of a cannon shot, or marine league, over the waters adjacent to its shores, (Bynk. Qu. Publ. Uris. 61; 1 Azuni, (Mar. Law,) 204, par. 15; Id. p. 185, par 4) and this doctrine has been recognized by the Supreme Court of the United States. (Church *v.* Hubbart) 2 Cranch (6 U. S.) 187, 231. Indeed such waters are considered as a part of the territory of the sovereign."

The Ann, 1 Fed. Case. No. 397.

In Cunard S. S. Co. v. *Mellon,* 262 U. S. 100 (1923),

The court said:

"Various meanings are sought to be attributed to the term territory in the phrase, 'The United States and all territory subject to the jurisdiction thereof.' We are of the opinion that it means the regional areas—of land and adjacent waters—over which the United States claims and exercises dominion and control as a sovereign power. The immediate context and the purport of the entire section, show that the term is used in a physical, and not a metaphorical, sense,—that it refers to areas or districts having fixity of location and recognized boundaries. See United States *v.* Bevans, 3 Wheat. 336, 339, 4 L. Ed. 404, 417.

It is now settled in the United States and recognized elsewhere that the territory subject to its jurisdiction includes the land areas under its dominion and control, the ports, harbors, bays, and other inclosed arms of the sea along its coast, and a marginal belt of the sea extending from the coast line outward a marine league, or 3 geographical miles. Church *v.* Hubbart, 2 Cranch 187, 234, 2 L. Ed. 249, 264; The Ann. 1 Gall. 61, Fed. Cas. No. 397; United States *v.* Smiley, 6 Sawy. 640, Fed. Cas. No. 16317; Manchester *v.* Massachusetts, 139 U. S. 240, 257, 258, 35 L. Ed. 159, 164, 11 Sup. Ct. Rep. 559; Louisiana *v.* Mississippi, 202 U. S. 1, 52, 50 L. Ed.

913, 931, 26 Sup. Ct. Rep. 408, 571; 1 Kent, Com. 12th ed. 29; 1 Moore, (123) International Law Dig. par. 145; 1 Hyde, International Law, par. 141, 142, 154; Wilson, International Law, 8th ed. par. 54; Westlake, International Law, 2nd ed. pp. 187 et seq.; Wheaton, International 5th Eng. ed. (Phillipson) p. 282; 1 Oppenheim, International Law, 3d ed. par. 185-189, 252. This, we hold, is the territory which the Amendment designates as its field of operation; and the designation is not of a part of this territory but of 'all' of it."

Cunard S. S. Co. v. *Mellon,* 262 U. S. 100 (1923).

We are familiar with the case of *Arch et al.* v. *United States,* decided by this Court May 12, 1926, being Case No. 4498 and involving a libel growing out of a violation of the customs duty. The court sustained the seizure of the vessel without the procuring of a search warrant for the reason that the parties had been guilty of a violation of the Tariff Act of September 21, 1922, paragraph 581. This Court did, however, in the opinion, say:

"If her intention had been only to anchor without the jurisdiction of limits and there to sell to chance customers, the case presented would have been different." Burns *vs.* U. S., 296 Fed. 468; Romano *vs.* U. S., 9th Fed. (2d) 522.

In this case the action was taken against the vessel by the United States Government for the purpose of enforcing and protecting the revenues of the Government and under an Act of Congress and also under the International Law, which has recognized the rights of nations for the protection of its revenues and to prevent smuggling, to search vessels at a distance beyond the territorial waters of the nation.

The United States Court has held:

"A state bordering on the sea may extend its borders to length of one marine league from low-water mark

into the sea. U. S. *vs.* New Orleans Meadows Imp. Co., 173 Fed. 426."

We wish to call the court's attention specifically to the fact that under the provision under which this appellant was prosecuted, it is obvious that his Constitutional rights under Section One of Article 14, originally as the Fourteenth Amendment to the Constitution of the United States, which provides:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States * * * nor deny to any person within its jurisdiction the equal protection of the laws."

It is apparent from the reading of the above in connection with the statute, Section 8087 of Compiled General Laws of Florida (This brief, pp. 14-15) that a citizen of a foreign country residing in the State of Florida, might fish for sponge more than one marine league from mean low tide on the shoreline of the State of Florida, while a citizen of the United States residing in the State of Florida and fishing at the same spot would, under the Florida statute, be subject to arrest and prosecution while the alien so residing in Florida, under the protection of his government, would be immune from arrest on the high seas.

Question II.

(Tr. of Record, page 60)

"The appellant insists that the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida of 1885, and the law under which this appellant was prosecuted are invalid and void for the reason that the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida, conflict with and violate the treaty provisions of the United States of America, as shown by the record."

This question covers and includes Assignment of Error number Eight (Tr. of Record, page 49) also Assignment of Error number Fifteen (Tr. of Record, page 53).

The treaties referred to being listed Transcript of Record, pages 20-23 inclusive, and omitted here for brevity.

By referring to the stipulation entered into between the State of Florida and the defendant, Lambiris Skiriotes, (Tr. of Record, page 20 to 23) it will appear that it was stipulated that the treaty of amity, settlement, and limits under which the United States acquired the uplands of the Florida Peninsular but did not acquire any part of the waters surrounding the State of Florida below mean low tide. It was also agreed that seventeen other treaties of the United States entered into between January 23, 1924, and August 8, 1930, each of which is specifically set out in the stipulation, all in express terms fix the international boundaries of the United States at three marine miles or one marine league measured from low water mark on the mainland, and declare the remainder of the seas out of the jurisdiction of the United States and constitute the high seas.

The Treaty of Amity, Settlement and Limits between the United States of America and His Catholic Majesty, Article II, contains the following provision:

> "Article II. His Catholic Majesty cedes to the United States, in full property and sovereignty, all the territories which belong to him, situated to the eastward of the Mississippi, known by the name of East and West Florida. The adjacent islands dependent on said provinces, all public lots and squares, vacant lands, public edifices, fortifications, barracks, and other buildings, which are not private property, archives and documents, which relate directly to the property and sovereignty of the said provinces, are included in this article. The said archives and documents shall

be left in possession of the commissaries or officers of the United States, duly authorized to receive them."

It is, therefofe, apparent that the only territory ceded to the United States was the upland of the mainland of the United States together with the islands and did not include the waters of the Gulf of Mexico further than as has been held by the Courts of the United States to include under the International Law a strip of coastwise waters extending one marine league outward from mean low tide on the upland.

The Constitution of Florida of 1865, Article XII, does not change the boundaries and limits of the State of Florida as fixed in the Constitution of Florida of 1861.

After the Civil War the Congress of the United States refused to seat the delegates from the Southern states which had seceded from the Union; the resolution provided that they should not be seated unless and until the several Southern states had amended their Constitution so as to include the Fourteenth Amendment to the Federal Constitution. This was the only requirement required and pursuant to that requirement the State of Florida in 1868 amended its Constitution so as to include the Fourteenth Amendment and at the same time in other respects amended its Constitution.

By reference to Article I of the Constitution of Florida of 1868 the Boundaries of the State of Florida were set forth in the following language:

"Article I. Boundaries. The boundaries of the State of Florida shall be as follows: Commencing at the mouth of the river Perdido; from thence up the middle of said river to where it intersects the south boundary line of the State of Alabama, and the thirty-first degree of north latitude; then due east to the Chattahoochee river; then down the middle of said river to its

confluence with the Flint river; from thence straight to the head of the St. Mary's river; then down the middle of said river to the Atlantic ocean; thence southeastwardly along the coast to the edge of the Gulf Stream; hence southwestwardly along the edge of the Gulf Stream and Florida Reefs to and including the Tortugas Islands; thence northeastwardly to a point three leagues from the mainland; thence northwestwardly three leagues from the land, to a point west of the mouth of the Perdido river; thence to the place of beginning."

On the 2nd day of March, 1867, an act was passed by the Congress of the United States entitled "An Act to Provide for a More Efficient Government of the Rebel States. (14 Stats. 428)".

Under this Act the states which had seceded were divided into military districts and the states were deprived of their representation in Congress until a State Constitution was adopted including the Fourteenth Amendment therein; and that upon its approval by Congress and upon the state's adoption of the Fourteenth Amendment to the Federal Constitution, the state would be entitled to representation in Congress.

On March 23, 1867, the Congress of the United States passed an act entitled "An Act Supplementary to an Act entitled 'An Act to Provide for a More Efficient Government of the Rebel States' passed March 2nd, 1867, and to facilitate restoration."

This supplementary act required these states to adopt a state constitution in conformity with the terms of the Act; it further provided that after the state constitution had been adopted, a copy should be sent to Congress and if Congress approved the constitution as adopted, the state should then be entitled to representation and her representatives and senators should be admitted to Congress.

On June 25, 1868, Congress passed an Act entitled "An Act to Admit the States of North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida to representation in Congress. (15 Stats. 73)."

This Act recited that these states had adopted a constitution in accordance with the Act of March 7, 1867.

The Constitution referred to in the Act of June 5, 1868, as having been adopted by the State of Florida was the Constitution of the State of Florida of 1868. We cannot agree with counsel for appellant that the Congress of the United States specifically accepted, indorsed, or approved any boundaries therein contained of the State of Florida. The only purpose and object of the several acts of Congress above set forth was to force the states to include in their respective constitutions the Fourteenth Amendment to the Federal Constitution and the abolition of slavery; no reference to any other feature or change of the State Constitution of Florida being contained in the said Act; on the contrary, argument of counsel for appellant is inconsistent with the policy of the United States Government beginning in 1794 and continuing to the present time, which policy has been thoroughout the entire period of time both in treaties and in diplomatic letters and relations to insist at all times that one marine league or three nautical miles is and shall be the international boundary and only those waters adjacent to the upland and lying within three miles of mean low tide on the shoreline shall be territorial waters of the United States and that beyond one marine league or three nautical miles all waters shall be considered waters of the high seas, as will more fully appear by the authorities hereinafter cited.

The Constitution of Florida of 1885 which is the Constitution now in force, in Article I, dealing with boundaries gives the same identical description as was contained in the Constitution of Florida of 1868 above quoted.

Assuming that the Congress of the United States, in approving the Constitution of Florida of 1868, had the right to and did by inference accept the boundaries as fixed in that Constitution, which appellant does not in anywise concede; it must also be assumed that if the Congress of the United States also had the right to change that boundary again subsequently to the passage of the original act approving the Constitution of Florida.

This change might have been effected under the terms of Article VI of the United States Constitution in either one of three ways. First, by a provision of the United States Constitution. Second, by an act of Congress. Third, by entering into treaties with foreign powers, which treaties were authorized by the constitutional provisions herein quoted.

This the United States has unquestionably done in each of the sixteen treaties listed in the record (R. 11 to 16 inclusive). All of the treaties are of later date extending from 1924 to 1930. In each of which treaties the United States Government definitely and in plain language insists that the boundaries of the United States shall not by the terms of the treaty be changed but shall remain at one marine league from mean low tide on the shore line.

To our mind it would be entirely absurd to say that under the constitutional limitations the State of Florida could, under any circumstances, be authorized to extend its boundaries, or acquire, own, or control any territory outside of the limits of the United States of America.

The United States courts have repeatedly held:

> "A treaty may supersede a prior Act of Congress, and an Act of Congress may supersede a prior treaty. Cherokee Tobacco (Ark. 1870), 11 Wall. 621, 20 L. Ed. 227. See also Alvarez y Sanchez *v.* U. S. (Ct. Cl. 1910), 216 U. S. 167, 30 S. Ct. 361, 54 L. Ed. 432."

The Supreme Court of the United States has also said:

"By the Constitution a treaty is placed on the same footing, and made of like obligation, with an act of legislation. Both are declared by that instrument to be the supreme law of the land, and no superior efficacy is given to either over the other. When the two relate to the same subject, the courts will always endeavor to construe them so as to give effect to both, if that can be done without violating the language of either, but, if the two are inconsistent, the one last in date will control the other; provided, always, the stipulation of the treaty on the subject is self-executing."

Whitney v. *Robertson* (N. Y. 1888) 124 U. S. 194, 8 S. Ct. 456, 31 L. Ed. 386. See, also, *Rainey* v. *U. S.* (N. Y. 1914) 232 U. S. 310, 34 S. Ct. 429, 58 L. Ed. 617; *U. S.* v. *Lee Yen Tai* (1902) 185 U. S. 220, 22 S. Ct. 629, 45 L. Ed. 878; *Horner* v. *U. S.* (N. Y. 1892) 143 U. S. 570, 12 St. Ct. 522, 36 L. Ed. 266; In re *Ah Lung* (C. C. Cal. 1883) 18 F. 28, 29; *Ex parte Wong Gar Wah* (C. C. A. Cal. 1927) 18 F. (2d) 250, *Certiorari* denied (1727) 48 S. Ct. 21, 72 L. Ed. 409 • • • .

The United States Supreme Court also has said:

"A treaty is in its nature a contract between two nations, not a legislative act. It does not generally effect, of itself, the object to be accomplished, especially so far as its operation is infra-territorial; but is carried into execution by the sovereign power of the respective parties to the instrument. In the United States a different principle is established. Our Constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself without the aid of any legislative provisions. But when the terms of the stipulation import a contract, when either of the parties engage to perform a particular act, the treaty addresses itself to the political, not the judicial department, and the legislature

must execute the contract before it can become a rule for the court."

> *Foster* v. *Neilson* (La. 1829) 2 Pet. 313, 7 L. Ed. 415. See, also, *Chinese Exclusion* Case (Cal. 1889) 130 U. S. 600, 9 S. Ct. 623, 32 L. Ed. 1068, affirming (C. C. 1888) 36 F. 431; *Chew Heong* v. *U. S.* (C. C. Cal. 1884) 112 U. S. 540, 5 S. Ct. 255, 28 L. Ed. 770; In re *Ah Lung* (C. C. Cal. 1883) 18 F. 28, 29.

The Court has also held:

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Again speaking of the force and effect of a treaty of the United States, it has been said:

> "A treaty, assuming it to be made conformably to the Constitution in substance and form, has the effect of repealing all preceding federal law in conflict with it, whether unwritten, as law of nations, or admiralty and common law, or written, as Acts of Congress. Copyright Convention with Great Britain (1854), 6 Op. Atty. Gen. 293."

The Supreme Court of the United States also said:

> "When treaty rights are of a nature to be enforced in a court of justice, that court resorts to the treaty for a rule of decision for the case before it as it would to a statute. Head Money Cases, (N. Y. 1884) 112 U. S. 598, 5 S. Ct. 247, 28 L. Ed. 798, affirming (C. C. 1883) 18 F. 135. See, also, in re Metzger (D. C. N. Y. 1847), 5 N. Y. Leg. Obs. 83, 17 Fed. Cas. No. 9511."

If the Congress of the United States in admitting the State of Florida back into the Union and seating its rep-

resentatives in Congress in 1868 did, as may be contended by the State, indirectly, though not in express language, approve the boundaries of Florida fixed in the Constitution of the State of Florida of 1868, then it must also be conceded that by the adoption of the treaties above referred to the Government of the United States has receded from that position and has limited the territorial jurisdiction of the State of Florida to one marine league under the authorities of the cases cited.

It must also be conceded under the authority of the cases cited in the next section of this brief, that the political authority of the United States have also receded from that position and have consistantly at all times adhered to the international boundary of one marine league from mean low tide on the shore line.

By the Act of Congress above quoted requiring the several states that had seceded from the Union to adopt as a part of their State Constitution the Fourteenth Amendment, and no other requirement being made, it must be assumed that the Congress of the United States intended what was said in the Act and had no reference to any other changes in the State Constitution; it must also be assumed that in ratifying the State Constitution, the Congress of the United States was concerned about no matter save and except the requirement of the provision of the act of Congress requiring the inclusion of the Fourteenth Amendment.

It is a self evident fact that if Congress had the right to authorize the extension of the boundaries of the State of Florida, it must necessarily follow that Congress also had the right, and the other departments of Government had the right, at least the Treaty Making Department of the Government had the right, to restrict that boundary to the international boundary fixed in the treaties of the United States.

Question III.

(Tr. of Record, page 60)

"The appellant insists that even if the Court should consider that the question involved is a political question that the record shows that under the political rulings of the Executive and State Departments of the Government it has been conclusively established that the international boundary of the United States of America has been definitely and permanently fixed at one marine league from mean low tide on the mainland and adjacent islands, and that, therefore, the Constitution of the State of Florida attempting to fix the boundaries of the State of Florida at nine nautical miles from mean low tide, and the law of the State of Florida under which the appellant was prosecuted are both null and void in that the same violate the rulings (fol. 165) and decisions of the Executive and State Departments of the United States Government."

This question includes Assignment of Error number Nine and number Sixteen.

The various diplomatic correspondence is not here repeated but will be found in Transcript of Record, page 49-51 inclusive.

We think it a self-evident fact that no State of the United States can own or control any territory lying beyond the limits of the United States. It is also equally true and self-evident that no State can pass criminal laws governing or controling any territory beyond the limits and jurisdiction of the United States.

The Trial Judge in this case had before him a printed volume containing the report of the 1929 Conference at Geneva of the League of Nations, issued by the Publication Department of the League of Nations "Conference for the Codification of International Law". Tome II —Eaux Territoriales; in which they set forth the Diplomatic and Ex-

ecutive correspondence of the United States beginning in 1793 and extending to January, 1904, which is set forth in the Transcript of Record at pages 23-27 inclusive, and for the sake of brevity omitted here. All of which correspondence conclusively shows that the United States has constantly and has continuously adhered to the position that the international boundary of the United States be and is limited to one marine league from mean low tide on the shore line of the territory of the United States.

It may be insisted that the question presented in this case is a political question and should be settled by the political authorities of the United States and counsel for the State may refer to the following cases:

Poole, et al. v. *Fleeger,* 36 U. S. 184;
Virginia v. *Tennessee,* 148 U. S. 503;
Jones v. *United States,* 137 U. S. 202;
Pearcy v. *Stranahan,* 205 U. S. 257;
Louisiana v. *Mississippi,* 202 U. S. 1;
Bergess, Poole, et al. v. *Lessee of John Fleeger,* 36 U. S. 184;
Handley's Lessee v. *Anthony,* 5 Wheat 374;
Foster v. *Neilson,* 2 Pet. 253;
United States v. *Arredondo,* 6 Pet. 710, 735, 743;
Wortham v. *Sullivan,* 147 S. W. 702;
Bedell v. *Loomis,* 11 N. H. Rep. 9;
State of Maine v. *Wagner,* 61 Me. 178;
Harrold et al. v. *Arrington,* 64 Tex. 233;
Guadalupe County v. *Wilson County,* 58 Tex. 228;
Whitney v. *Robertson,* 124 U. S. 190;
Horner v. *United States,* 143 U. S. 570;
Buckner v. *Finley,* 2 Pet. 590;
City of Galveston v. *Menard,* 23 Tex. 357.

All of these cases are cases dealing with the question of disputed land boundary line between the States and none

of them had any relation to the international boundary lines or the boundary lines of the territorial jurisdiction of the United States; we are of the opinion that in cases of this kind it is a question which should be settled by the political authority rather than the courts, although we did not concede that the courts have not final jurisdiction to determine what is the true boundary line.

We are also familiar with the cases of:

United States v. *Ford et al.*, 3 Fed. (2d) 643;
In the matter of the ship North, 37 Canada Supreme Court 385;
The Grace and Ruby, 283 Fed. 475.

These three cases were each decided upon specific terms contained in certain treaties of the United States and in strict accordance with the treaty provisions; thus requiring the force and authority of the treaty-making power of the United States.

The treaty provisions of all of the treaties entered into by the United States limit specifically the boundaries of the United States to one marine league.

This Honorable Court has also held:

> "By the Constitution a treaty is placed on the same footing, and made of like obligation, with an act of legislation. Both are declared by that instrument to be the supreme law of the land, and no superior efficacy is given to either over the other. When the two relate to the same subject, the courts will always endeavor to construe them so as to give effect to both, if that can be done without violating the language of either, but, if the two are inconsistent, the one last in date will control the other; provided, always, the stipulation of the treaty on the subject is self-executing."
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See also:

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The court has also held:

"A treaty may supersede a prior Act of Congress, and an Act of Congress may supersede a prior treaty." Cherokee Tobacco (Ark. 1870), 11 Wall. 621, 20 L. Ed. 227.

See also:

Alverez y Sanchez v. *U. S.* (Ct. Cl. 1910), 216 U. S. 167, 30 S. Ct. 361, 54 L. Ed. 432.

Again speaking of the force and effect of a treaty of the United States, it has been said:

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Question IV.

(Tr. of Record, page 61)

"Appellant insists that the jurisdiction of the Criminal Courts of the State of Florida does not and cannot extend to a greater distance than one marine league from mean low tide on the mainland of the State of Florida and adjacent islands included within the territory of the State of Florida."

This question includes the grounds raised in Assignments of Error No. One (Transcript of Record, page 47) Assignment of Error No. Two (Tr. of Record, page 48) Assignment of Error No. Ten (Tr. of Record, page 51) Assignment of Error No. Eleven (Tr. of Record, page 52) Assignment of Error No. Twelve (Tr. of Record, page 52) Assignment of Error No. Thirteen (Tr. of Record, page 52) Assignment of Error No. Seventeen (Tr. of Record, page 53).

We respectfully insist that the Courts of the State of Florida are wholly without jurisdiction more than one marine league from mean low tide on the West coast of Florida and more than one marine league from any adjacent island on the West coast of Florida, and call the Court's attention to the fact that the maps of the United States show that there are no islands opposite Pinellas County and more than one marine league from mean low tide on the uplands of the State; that the agreed state of facts admit that the act was committed more than one marine league at sea, to-wit, two marine leagues out on the high seas. This being true, this Court said:

> "A state can control fishing to the extent of one marine league from its shores."
>
> "Within what is recognized by the law of nations for a State's territorial limits, the State can regulate its boundaries."
>
> *Manchester* v. *Commonwealth,* 139 U. S. 240, 258, 35 L. Ed. 159, 11 S. Ct. 559.

This Court also said:

> "An award restricting to a marine league exclusive jurisdiction over Bering Sea was held binding."
>
> *The La Ninfa,* 75 Fed. 513, 21 C. C. A. 434.

It was also held:

> "The jurisdiction of a nation extends into the sea one marine league."

The Marjorie Bachman, 4 F. (2d) 405;
U. S. v. *Bevans,* 3 Wheaton 336 4 L. Ed. 404.

Mr. Justice Fields speaking for the Court said:

"All the writers upon public law agree that every nation has exclusive jurisdiction to the distance of a cannon shot, or marine league, over the waters adjacent to its shores, (Bynk. Qu. Pub. Uris. 61; 1 Azuni, (Mar. Law) 204; Par. 15; Id. p. 185, par. 4) and this doctrine has been recognized by the Supreme Court of the United States. (Church v. Hubbart) 2 Cranch (6 U. S.) 187, 231. Indeed such waters are considered as a part of the territory of the sovereign."

The Ann, I Fed. Cas. No. 397.

The court has also said:

"Various meanings are sought to be attributed to the term 'territory' in the phrase, 'The United States and all territory subject to the jurisdiction thereof'. We are of the opinion that it means the regional areas—of land and adjacent waters—over which the United States claims and exercises dominion and control as a sovereign power. The immediate context and the purport of the entire section, show that the term is used in a physical, and not a metaphorical, sense—that it refers to areas or districts having fixity of location and recognized boundaries. See United States *v.* Bevans, 3 Wheat. 336, 339, 4 L. Ed. 404, 417."

"It is now settled in the United States and recognized elsewhere that the territory subject to its jurisdiction includes the land areas under its dominion and control, the ports, harbors, bays, and other inclosed arms of the sea along its coast, and a marginal belt of the sea extending from the coast line outward a marine league, or three geographical miles. Church *v.* Hubbart, 2 Cranch. 187, 234, 2 L. Ed. 249, 264; The Ann, 1 Gall. 61, Fed. Cas. No. 397; United States *v.* Smiley, 6 Sawy. 640, Fed. Cas. No. 16317; Manchester *v.* Mas-

sachusetts, 139 U. S. 240, 257, 258, 35 L. Ed. 159, 164, 11 Sup. Ct. Rep. 559; Louisiana *v.* Mississippi, 202 U. S. 1, 52, 50 L. Ed. 913, 931, 26 Sup. Ct. Rep. 408, 571; 1 Kent, Com. 12th Ed. 29; 1 Moore, (123) International Law Dig. par. 145; 1 Hyde International Law, par. 141, 142, 154; Wilson, International Law, 8th ed. par. 54; Westlake, International Law, 2nd ed. pp. 187, et seq.; Wheaton, International, 5th Eng. ed. (Phillipson) p. 282; 1 Oppenheim, Internation Law, 3d ed. par. 185-189, 252. This, we hold, is the territory which the Amendment designates as its field of operation; and the designation is not of a part of this territory but of 'all' of it."

Cunard S. S. Co. v. *Mellon*, 262 U. S. 100 (1923).

We are familiar with the case of *Arch, et al.* v. *United States*, decided by this court May 12, 1926, being Case No. 4498 and involving a libel growing out of a violation of the customs duty. The court sustained the seizure of the vessel without the procuring of a search warrant for the reason that the parties had been guilty of a violation of the Tariff Act of September 21, 1922, paragraph 581. This Court did, however, in the opinion, say:

> "If her intention had been only to anchor without the jurisdictional of limits and there to sell to chance customer, the case presented would have been different." Burns *v.* U. S., 296 Fed. 468; Romano *v.* U. S., 9th F. (2d) 522.

Conclusion.

The Court has only to look to recent events to determine the policy of the United States Government.

The sea fisheries were wholly destroyed off of the northwest coast of the United States, the salmon off the coast of the States of Washington and Oregon within the last two years are about to be depleted and destroyed by the encroachment of the Japanese Government, the floating can-

neries remaining outside of the three-mile limits and the Government being powerless to prevent their encroachment and having only partially succeeded by diplomatic representation and correspondence to some extent of alleviating the danger.

If the State of Florida has authority and power to extend its boundaries sixty miles into the Gulf of Mexico in order to take in the Florida Straits between Key West and the mainland and take any strip three marine leagues off shore on the entire West Coast of Florida, then where is the limit beyond which the State cannot go?

For the reasons herein set forth we respectfully insist that the judgment of the lower court was not correct and the same should be reversed.

W. B. DICKENSON,
W. B. DICKENSON, JR.,
Attorneys for Appellant.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 658

LAMBIRIS SKIRIOTES,
Appellant,

vs.

THE STATE OF FLORIDA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA.

REPLY BRIEF OF APPELLANT.

W. B. DICKENSON, SR.,
W. B. DICKENSON, JR.,
Attorneys for Appellant.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 658

LAMBIRIS SKIRIOTES,

Appellant,

vs.

THE STATE OF FLORIDA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA.

REPLY BRIEF OF APPELLANT.

To the Honorable Justices of the Said Court:

We have not yet received a copy of a printed brief which the Attorney General of the State of Florida advised us he would have printed; not knowing whether he has done this we think it inadvisable to longer wait before filing a reply brief to the typewritten brief furnished to us by him.

In his summary of the argument, the Attorney General submits for the consideration of the Court

"Point 1.

A citizen of Florida cannot question the boundaries of the State as defined by the Constitution of the State."

"Point 2.

Acquiescence by its citizens and by the Federal government in the boundaries of Florida as defined by the Constitutions of 1868 and 1885 estop such parties from questioning the boundaries."

We see no reason for taking these questions up separately because they both raise the question of estoppel.

We submit to the Court that under the facts of this case there can be no estoppel of the right of the appellant to challenge the validity of the boundaries of the State of Florida as fixed by the Constitution of Florida of 1885; especially is this true where, as shown by the record in this case the appellant from inception of his prosecution raised and insisted upon all of his constitutional rights under the Constitution of the United States.

Twelfth *C. J.* page 774, paragraph 203, it is said:

"Those rights guaranteed to accused persons by the Constitution in which the State as well as the accused person is interested may not be waived by the accused, and therefore submission by him to proceedings under statutes and derogation of these rights does not estop him to deny the validity of such statutes."

Citing 106 Pa. 364, 40 Mont. 326, *State* v. *Vanella*, also 57 P. 542, 19 Utah 505, *State* v. *Mannion*.

We are also aware of the fact that the citation from 12 *C. J.* above quoted goes on to say

"But those constitutional guaranties which are in the nature of personal privileges of the accused may be waived *by him*, and therefore he may not question the constitutionality of the statute under which he has made such a waiver."

Citing, 109 U. S. 65, 3 S. Ct. 1, 27 L. Ed. 857.

We submit, however, in this case that the appellant as shown by the record was guilty of no conduct or act on his

part which could be construed to be a waiver of his constitutional right.

In the case decided by this Court above quoted from the court held:

> "Pleading in bar to an indictment also held to be a waiver of the right to object to the constitutionality of a law by which the Grand Jury was made up."

In this case the appellant raised the question of and asserted all of his constitutional rights before pleading to the indictment at all.

We call the court's attention to the case of *Andrew J. Coffee, plaintiff in error* v. *James M. Groover, et al.*, 123 U. S. 1, 31 L. Ed. 51, which case originated in Florida and involved the title to certain lands lying in a strip of territory claimed by the State of Florida and also claimed by the State of Georgia in which this Court said in the 3rd head note:

> "A boundary between Georgia and Florida was long in dispute Georgia claiming to a line called Watson's line, and exercising political jurisdiction, and making grants of land to that line; whilst Florida claimed to a line called McNeil's; further north than Watson's. Upon running the true line, as finally agreed upon by the two states, it was found to be further north than McNeil's line: HELD (1) That the grant made by Georgia of the land in dispute, which was south of McNeil's line though made whilst Georgia exercised the powers of government de facto over the territory there, was nevertheless void: (2) That the confirmation by Florida of the grants made by Georgia, would not invalidate or disturb the grant of the land in dispute previously made by itself."

It is also well known that for more than sixty years after the adoption of the 14th Amendment to the Constitution of the United States and notwithstanding the constitutional

rights therein guaranteed the thirteen Southern states each having embraced in their own constitution the provisions of the 14th Amendment of the Constitution of the United States indulged in a systematic and continuous practice of excluding from citizens of African decent or the Negro race the right to jury service in all of the said Southern states but notwithstanding this long failure to assert this Constitutional right this Court in

Shibuya Jugiro v. *Brush;*
Re: Shibuya Jugiro, 140 U. S. 291, 11 Sup. Ct. Rep. 770
held.

> "It rests with each state to prescribe such qualifications as it deems proper for jurymen taking care only that no discrimination in this respect as to such service be made against any class of citizens solely because of their race."

This adjudication by this Court has been followed in a number of cases subsequent.

The Attorney General also says:

> "Point 3.
>
> The establishment of a state boundary is a political rather than a juridical question and once established and recognized by the political departments of the State and nation the boundaries cannot be questioned by the judicial department."

We submit to the court that in the case cited by the Attorney General, *Poole* v. *Fleeger,* 36 U. S. 184, is the paragraph copied from the opinion showing that this was a boundary dispute between two States lying between the States of Tennessee and Kentucky. A part of the quotation which he includes in his brief from that opinion says:

> "It cannot be doubted that it is a part of the general right of sovereignty, belonging to independent

> nations, to establish and fix the disputed boundaries between their respective territories; and the boundaries, so established and fixed by compact by the nations, become conclusive upon all the subjects and citizens thereof, and bind their rights, and are to be treated, to all intents and purposes, as the real and true boundaries. This is the doctrine universally recognized in the law and practice of nations."

In the case at bar no such situation exists and no question between the States; if the Court accepts this holding of this Court quoted above as the law, which we accept as the law, then the political authority of the United States has settled the question adversely to the contention of the State Attorney General because the United States government long since fixed the boundaries and have adhered to the boundaries as fixed since 1794. See our original brief pages 24-32, inclusive.

There are many other treaties of the United States to the same effect. We also call the Court's attention to our original brief pages 33-37, inclusive, showing and setting forth the diplomatic correspondence of the United States wherein it is shown by the Transcript of Record, pages 49-51, inclusive, that the United States has consistently insisted upon the boundaries as fixed at three nautical miles or one marine league from shore.

By reference to 5 Stats. 743, Section 5, the Court will see that under this act of Congress of March 3, 1845, admitting Florida into the Union provided:

> "That said State of Florida shall embrace the territories of East and West Florida, which by the Treaty of Amity, Settlement and Limits between the United States and Spain, on the 22nd day of February 1819 was ceded to the United States."

Thus it will be seen by reference to the treaty referred to that Spain ceded to the United States only the up lands of

the territories of East and West Florida together with the adjacent islands. This fixed the boundaries of the State both by treaty and by act of Congress.

"Point 4.

"The judiciary will recognize the action of the political department of the government as expressed by the Congress of the United States in the approving of the Florida Constitution of 1868 which defined the boundaries of the State in words repeated in the Florida Constitution of 1885."

We submit to the Court that this statement assumes a fact which is not existing in that the Attorney General asserts that the Congress of the United States "approved" the Constitution of the State of Florida whereas such is a fact which is non-existing.

By reference to 14 Stats. 428, Section 5, Act of Congress of March 2, 1867, it was provided:

"When such Constitution shall provide that the elective franchise shall be enjoyed by all such persons as have the qualifications herein stated for electors or delegates, and when such Constitution shall be ratified by a majority of persons voting on the question of ratification who are qualified electors of delegates, and when such Constitution shall have been submitted to Congress for examination and approval, and Congress shall have approved the same, and when said state by a vote of its Legislature * * * shall have adopted the amendment to the Constitution of the United States, proposed by the 39th Congress, and known as Article 14 * * * then such state shall be entitled to representation in Congress."

By reference to 15 Stats. 2, Section 5, the Court will find that the Congress of the United States on March 23, 1867, adopted another act amending 14 Stats. 428, but having no relation to the questions here.

By reference to 15 Stats. 73 the Court will see that the Congress of the United States on June 25, 1868, adopted this statute providing:

> "Whereas * * * Florida in compliance with the Act of March 2, 1867 and amendments thereto, framed the Constitution of state government which is republican. * * *
>
> "Be it enacted * * * that each of the states of * * * and Florida, shall be entitled and admitted to representation in Congress when the Legislature shall have ratified the 14th amendment to the United States Constitution."

It is therefore apparent that the Congress of the United States did not ratify the Constitution of the State of Florida except in respect to the adoption and inclusion therein of the 14th amendment.

The Congress of the United States by 5 Stats. 743, Sec. 5, *supra*, having fixed the boundaries of the United States and not having expressly changed the boundaries of the United States could not indirectly and without any apparent intention so to do repeal the former act.

We therefore submit to the Court that there is no merit in this contention.

The Attorney General in his oral argument has something to say about the right of the State of Florida to pass such acts as might be necessary for the regulation and conservation of the sponge fishing industry.

By reference to Chapter 8087, Compiled General Laws of Florida, copied in full in appellant's original brief at pages 14 and 15, the Court will see that this statute is not a regulatory statute but is a statute absolutely prohibiting the taking of sponges "from the Gulf of Mexico, or the Straits of Florida or other waters within the territorial limits of the State of Florida", therefore, the act prohibits the taking of sponge from the entire Gulf territory, also from the

entire territory covered by the Straits of Florida, also from other waters within the territorial limits of the State of Florida which might include also the Atlantic Ocean. This act is especially reprehensible in that it is in conflict with the 14th amendment of the Constitution in that it denies to a certain class of persons the right to fish at all in the Gulf of Mexico and also denies the right to that same class of persons to fish at any point in the Straits of Florida, also denies the right to fish at any point in waters within the territorial limits of the State of Florida at the same time granting to another class of persons full privileges to do the same fishing at any point in the same territory.

There are two classes of persons who take sponge from the Gulf of Mexico. One class is commonly called "hookers" because they stand in the bow of a rowboat with a thirty-foot cypress pole on one end of which are three iron hooks. They look through a glass bottom bucket to break the surface of the water and as another paddles the boat along when the man in the bow sees a sponge in the bottom he hooks it from the bottom with a long pole, hence he is called a hooker, and there are very few of these men and they cannot operate in water deeper than about twenty feet; by reference to the Government maps of the Gulf of Mexico and coastal regions off of Florida it will appear that a large percentage of the territory in which sponge is grown is deeper than these spongers can operate.

There is another class of spongers, known as deep sea divers and operate in any depth of water up to 200 feet by the use of diving apparatus they go down on the bottom and cut the sponge loose from moorings and send them up to the top in a mesh bag.

The first group above named fish without violation of the law and the other group are absolutely prohibited and deprived of that right by the operation of this law.

The Congress of the United States by 38 Stats. 692, carried forward in U. S. Code, Title 16, Section 781, original act adopted August 15, 1914, provided:

> "It shall be unlawful to catch or take from waters of the Gulf of Mexico or the Straits of Florida, outside of state territorial limits any commercial sponges, when wet less than five inches in their maximum diameter."

This act presents this question for the consideration of this Court: Under the Congressional act quoted, what constitutes the territorial waters of the State of Florida? To this question there can be but one answer and that is the waters lying parallel with the West boundary of the State of Florida and islands adjacent thereto and within three miles of the up land, all waters lying beyond that limit in the Gulf of Mexico was intended and is covered by the Act of Congress which permits the taking from any waters within the jurisdiction of Congress, sponges of greater maximum diameter than five inches.

It is evident that a citizen of the United States may fish six miles out where the appellant was fishing and, under the Act of Congress, take sponge from the Gulf of Mexico.

It is equally evident under the means, manner and method of enforcement of the Act of the Legislature of Florida, *supra,* the same man might be subject to arrest, fine and imprisonment or both; hence the conflict with the Federal Legislative Act.

This Court in the case of *The Abbey Dodge,* 223 U. S. 166, construed this Act.

The facts were The Abbey Dodge landed at Tarpon Springs with 1,229 bunches of sponge, were seized and the questions raised were:

(1) The Act deals with a matter exclusively within the jurisdiction of the State.

(2) The statutes regulate the subject not within the national grasp and hence not embraced within the power of Congress.

This Court said that the first question assumes that the Act regulates sponge within the territorial waters of the State.

The second question asserts that if limited to the bed of the ocean beyond the territorial limits of the State the national government has no power to deal with it. This the Court further said

> "While it is true that it would be possible to interpret the statute as applying to sponge taken in local waters, it is equally certain that it is susceptible of being confined to sponges taken outside of such waters.
>
> In view of the clear distinction between state and national power on the subject, long settled at the time the act was passed and the rule of construction just stated, we are of the opinion that its provisions must be construed as applicable to the subject within the authority of Congress to regulate."

"The second proposition denying to Congress the power to regulate the landing of sponges taken out side the territorial jurisdiction of a State. For the sake of brevity we do not stop to review the general question this proposition involves to demonstrate its inaccuracy, or to point out its conflict with the law of nations and its inconsistency with the practice of government from the beginning; although it would concede The Abbey Dodge was gathering sponge in the waters, which by the law of nations should be regarded as common property of all, and transporting them to the United States she was then within the power of Congress to regulate." It is therefore apparent that the Congress of the United States has assumed to control the taking of commercial sponge from the Gulf of Mexico beyond the one marine league or three nautical mile limit and the Congress

of the United States having legislated on the subject we submit to the Court that the State of Florida can not legislate on the same subject covering any greater territory than the waters bordering on the State and within one marine league from the mainland.

We call the Court's attention to *Bayside Fish Flour Company, Appellants* v. *J. Dale Gentry, Earl B. Gilmore, I. Zellerbach, et al.*, 297 U. S. 422-430, 80 L. Ed. 772.

This case was dealing with the sardine fisheries on the coast of California.

This Court in its opinion said:

> "Sardine are allowed to be taken for use in a reduction plant or by a packer only in accordance with certain provisions set forth. By paragraph 1068 the State Fish and Game Commission is authorized to grant a revocable permit subject to such restrictions, rules and regulations as the Commission may prescribe, to take and use fish by a reduction or extraction process. No reduction of fish may be permitted which may tend to deplete the species, or result in waste or deteriation of fish."

This California law permitted the packers of sardines to ply their trade free of any prohibition of the law. This Court said in discussing this question of class legislation:

> "A particular classification is not invalidated by the 14th amendment merely because inequality actually result. Every classification of persons or things have regulation but must produce inequality in some degree: but the law is not thereby rendered invalid, unless the inequality produced be actualy and palpably unreasonable and arbitrary."
>
> Citing *Arkansas Natural Gas Co.* v. *Arkansas R. Commission*, 261 U. S. 379, 384, 67 L. Ed. 705, 710, 43 S. Ct. 387.

The differences between the sardine case and the case at Bar is that this Court said that the California law under

question constituted a reasonable regulation although working some inequality. In the present case there is an absolute prohibition of one class of citizens while the other class is left free to pursue their avocation in the same identical line.

For the reasons stated herein as well as in our main brief we submit to the Court that the boundaries as attempted to be fixed by the Constitution of Florida are invalid and that the criminal jurisdiction of the criminal courts of the State of Florida are limited to the jurisdiction of a strip of the sea not exceeding one marine league from mean low tide from the shoreline of the State.

Respectfully submitted,

W. B. DICKENSON, SR.,
W. B. DICKENSON, JR.,
Attorneys for Appellant.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 658

LAMBIRIS SKIRIOTES,

Appellant,

vs.

THE STATE OF FLORIDA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA.

BRIEF OF APPELLEE.

J. TOM WATSON,
Attorney General of Florida;
NATHAN COCKRELL,
Assistant Attorney General;
Counsel for Appellee.

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SUPREME COURT OF THE UNITED STATES

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LAMBIRIS SKIRIOTES,

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vs.

THE STATE OF FLORIDA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA.

BRIEF OF APPELLEE.

Reference to the Report of the Case in the Court Below.

The opinion of the court below was filed September 6, 1940, and appears as *Skiriotes* v. *The State of Florida*, 197 So. 736, and will be found in the Transcript of Record herein beginning on page 36.

Statement as to Jurisdiction.

The appellants filed and served upon opposing counsel his statement on the jurisdiction of the court conformable

to the rules of the court, and this Court has reserved its ruling on such jurisdiction until after the hearing on the merits.

Statement of the Case.

The Statement of the Case as presented in the brief for appellant is fairly made.

Specification of Assigned Errors.

The object of this appeal is to have this Court declare the description of the territorial limits of Florida as contained in the Constitution of 1868 and in the Constitution of 1885 invalid.

Summary of the Argument.

Point 1.

A citizen of Florida cannot question the boundaries of the State as defined by the Constitution of the State.

Point 2.

Acquiescence by its citizens and by the Federal government in the boundaries of Florida as defined by the Constitutions of 1868 and 1885 estop such parties from questioning the boundaries.

Point 3.

The establishment of a State boundary is a political rather than a judicial question and once established and recognized by the political departments of the state and nation the boundaries cannot be questioned by the judicial department.

Point 4.

The judiciary will recognize the action of the political department of the government as expressed by the Congress of the United States in approving the Florida Constitution

of 1868 which defined the boundaries of the State in words repeated in the Florida Constitution of 1885.

ARGUMENT.

Before the points contained in the summary are discussed, we will present briefly the history of the statute the violation of which caused the arrest of the appellant. Chapter 7389, Laws of Florida, Acts of 1917, now appearing as Section 8087 Compiled General Laws of Florida, 1927, was passed to protect and perpetuate one of the great natural resources of the State of Florida by prohibiting the gathering of sponges by the diving method from the territorial waters of the State. For nearly twenty years there was no serious contest of this statute since diving had been done for the most part beyond nine miles from the mainland of the State. Then the gathering of sponges in the deeper waters became less profitable for various reasons and the divers started working closer in shore. The statute was tested and the jurisdiction of the State of Florida upheld in the case of *Lipscomb* v. *Gialourakis,* 101 Fla. 1130, 133 So. 104. Thereafter, a group of divers sought to enjoin the enforcement of the act by a suit in the District Court of the United States for the Northern District of Florida, but a three judge court first denied jurisdiction for lack of the required amount, and then after an amended bill was filed it dismissed the suit on the ground that injunction was not the proper remedy. *Pope* v. *Blanton,* 10 Fed. Supp. 15, 18. An appeal to this Court was taken but dismissed after the filing of briefs on the merits for lack of showing of the jurisdictional amount. *Pope* v. *Blanton* 299 U. S. 521.

This appellant was thereafter arrested for violation of the statute and released on a writ of habeas corpus issued by the District Court of the United States for the Southern District of Florida from which the sheriff appealed to the Circuit Court of Appeals for the Fifth Circuit. After a

hearing upon such appeal the lower court was reversed. *Cunningham* v. *Skiriotes*, 101 F. (2d) 635. Then this appellant was tried upon a stipulation of facts and the statement of the case contains the subsequent history.

Point 1.

A citizen of Florida cannot question the boundaries of the State as defined by the Constitution of the State.

We will not set forth here the wording of the definition of the boundaries of the State of Florida as it appears in the Constitutions of 1868 and 1885 since the definition as well as the history of the boundaries appears in the brief for appellant. The Supreme Court of Florida has confirmed the boundaries of the State at three leagues in the case of *Lipscomb* v. *Gialourakis*, 101 Fla. 1130, 133 So. 104, and has reaffirmed such stand in the judgment rendered September 6, 1940, from which this appeal has been taken.

When the three-judge district court considered the statute involved herein in the injunction suit and denied the application for an interlocutory injunction, *Pope* v. *Blanton*, 10 Fed. Supp. 1822, it said:

> "When a State acts with the consent of Congress, either express or implied, its action becomes conclusive upon the citizens."

When this appellant used the Federal court to be freed from his arrest, the Circuit Court of Appeals in reversing the lower court said (*Cunningham* v. *Skiriotes*, 101 F. (2d) 635):

> "We doubt his ability to question before a court the boundaries which his sovereign has set up. Domestic rather than international law governs his relations to his own State."

This court has held in *Jones* v. *U. S.*, 137 U. S. 202, 34 L. Ed. 691:

> "Who is the sovereign, de jure or de facto of a territory, is not a judicial, but a political, question, the determination of which by the legislative and executive departments of any government conclusively binds the judges, as well as all other officers, citizens and subjects of that government."

In Texas, which like Florida, has its boundary on the Gulf of Mexico defined as three leagues from the mainland, the highest court has held in *City of Galveston* v. *Menard*, 23 Tex. 349,391:

> "As between her own citizens * * * the boundary, prescribed and claimed by the government, is conclusive."

Point 2.

Acquiescence by its citizens and by the Federal Government in the boundaries of Florida as defined by the Constitutions of 1868 and 1885 estop such parties from questioning the boundaries.

The three-judge district court considering this question in *Pope* v. *Blanton*, 10 Fed. Supp. 18, 22, said:

> "The right of the State to fix its boundaries has never been questioned by any nation, by the Congress, or before, by any citizen of the State, and this acquiescence over a long period of time in the establishment of the boundary of the State is not only entitled to consideration by a Court in determining the right of the citizen to question the power of the sovereign State to change its boundary, but sufficient to estop the subject from questioning the right of the State to exercise dominion over its boundaries fixed by the Constitution and approved by the Congress."

This Court has held in the case of *Louisiana* v. *Mississippi*, 202 U. S. 1, 52:

> "As between the States of the Union long acquiescence in the assertion of a particular boundary, and the exercise of dominion and sovereignty over the territory within it, should be accepted as conclusive, whatever the international rule may be in respect of the acquisition by prescription of large tracts of country claimed by both."

Point 3.

The establishment of a State boundary is a political rather than a judicial question and once established and recognized by the political departments of the State and Nation the boundaries cannot be questioned by Judicial Department.

The government of the United States as well as of the State of Florida was established with three separate branches, the judicial, the executive, and the legislative, with certain checks one on the other. It has long been recognized that the judiciary will not invade the political field. Once a question is determined to be a political one, the courts will not pass upon it.

The question of the boundary of a state or nation has repeatedly been held to be a political and not a judicial one. In *Poole* v. *Fleeger*, 36 U. S. 185, 209, there was a dispute whether a certain parcel of land was in Tennessee or Kentucky, and this court held:

> "It cannot be doubted, that it is a part of the general right of sovereignty, belonging to independent nations, to establish and fix the disputed boundaries between their respective territories; and the boundaries so established and fixed by compact between nations, become conclusive upon all the subjects and citizens there-

> of, and bind their rights; and are to be treated, to all intents and purposes, as the true and real boundaries. This is a doctrine universally recognized in the law and practice of nations. It is a right equally belonging to the states of this Union; unless it has been surrendered under the constitution of the United States. So far from there being any pretence of such a general surrender of the right, that it is expressly recognised by the constitution, and guarded in its exercise by a single limitation or restriction, requiring the consent of Congress."

In the concurring opinion of Justice Baldwin in the same case appears the following:

> "Where there is an agreement, it is a matter of judicial cognizance to decree what and where the agreed boundary is; where there is none, it was a matter cognizable only before the King in council, before the revolution."

In two cases involving violation of federal liquor laws it has been held that the boat violating the law may be seized beyond a three mile limit. In the case of the *Grace and Ruby*, 283 F. 475, it was held:

> "The line between territorial waters and the high seas is not like the boundary between us and a foreign power. There must be, it seems to me, a certain width of debatable waters adjacent to our coasts. How far our authority shall be extended into them for the seizure of foreign vessels which have broken our laws is a matter for the political departments of the government rather than for the courts to determine."

In *U. S.* v. *Ford*, 3 F. (2d) 643, the quotation from *Jones* v. *U. S.* appearing under Point 1 hereof, is set out with approval. This court has also repeated such quotation in *Pearcy* v. *Stranahan*, 205 U. S. 257, 272, which considered

the jurisdiction of United States over the Isle of Pines, and held:

> "The Isle of Pines continues at least *de facto* under the jurisdiction of the government of the Republic of Cuba and that settles the question before us."

The highest courts in several states have likewise held that the question of the establishment of a boundary is one to be settled by the political and not the judicial department of the state government. *State* v. *Wagner,* 61 Me. 178; *Bedel* v. *Loomis,* 11 N. H. 9; *State* v. *Dunwell,* 3 R. I. 127; *Guadalupe County* v. *Wilson County,* 58 Tex. 228; *Harrold* v. *Arrington,* 64 Tex. 233; *Wortham* v. *Sullivan,* 147 S. W. 702.

Point 4.

The Judiciary will recognize the action of the political department of the Government as expressed by the Congress of the United States in approving the Florida Constitution of 1868 which defined the boundaries of the State in words repeated in the Florida Constitution of 1885.

This Court has held in *Phillips* v. *Payne,* 92 U. S. 130, 132:

> "In cases involving the action of the political departments of the government, the judiciary is bound by such action."

The action of the United States Government in regard to the Florida Constitution of 1868 has been fully set forth in the brief for appellant although it is denied that such approval was given to the boundary.

The early case of *Poole* v. *Fleeger,* 36 U. S. 185 held the right of sovereignty to establish boundaries which become conclusive upon all subjects and citizens and we call attention to the quotation from such case which we have set forth under Point 3 hereof.

It has been held by this Court in the case of *Virginia* v. *Tennessee*, 148 U. S. 503 that the consent of Congress need not be expressed, if it be implied by acquiescence.

When this point was first raised in the case of *Pope* v. *Blanton*, 10 Fed. Supp. 18, 22, the lower court held:

> "The Congress accepted this Constitution of 1868 by the passage of Act of June 25, 1868, reciting that the State had adopted the Constitution in accordance with the Act of March 2, 1867 * * * thereby accepting this change in the boundaries, and in effect recognizing that the boundaries of Florida had been extended into the Gulf of Mexico in accordance with the description given in the new Constitution."

This pronouncement by the three-judge district court we feel to be a correct statement. There is not shown to be any rule of law which prohibits the fixing of boundaries at any time by a state so long as it does not affect the territory of some other state of the Union. It is our belief that Congress has recognized the boundary of Florida as being three leagues from the mainland in the Gulf of Mexico and this Court is bound thereby.

Reply to Contentions of Appellant.

We feel that no good reason is shown in appellant's brief why the State of Florida could not extend its boundaries to three leagues from the mainland, nor that the Congress of the United States did not expressly or impliedly recognize and approve such action when it readmitted Florida to the Union after the adoption of the 1868 Constitution. The main attempt to have the provisions in the Constitution as to the boundaries void is based upon treaties of the United States and declarations of various persons as to a three mile limit. There is no case cited which held that three miles was the limit to which a state could extend its

boundaries; they merely state that such distance is a minimum. The treaties mentioned do not in any case touch upon the boundaries of the State of Florida and until some treaty is shown that does limit the boundary we do not believe they are in point.

Conclusion.

For the reasons set forth herein, it is respectfully urged that the appeal be dismissed.

Respectfully submitted,

J. TOM WATSON,
Attorney General of Florida;
NATHAN COCKRELL,
Assistant Attorney General;
Counsel for Appellee.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 658

LAMBIRIS SKIRIOTES,

Appellant,

vs.

THE STATE OF FLORIDA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA.

PETITION FOR REHEARING.

W. B. Dickinson, Sr.,
W. B. Dickinson, Jr.,
Counsel for Appellant.

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SUPREME COURT OF THE UNITED STATES

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THE STATE OF FLORIDA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA.

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To the Honorable Justices of the Said Court:

Comes now the above named appellant, Lambiris Skiriotes, by his attorneys, W. B. Dickenson, Sr., and W. B. Dickenson, Jr., and within twenty-five days from the filing of the opinion and judgment of this Honorable Court in the above entitled cause and files this his petition for rehearing in said cause, and thereupon respectfully shows unto the Court the following:

That this Court in its opinion and judgment rendered inadvertently overlooked a question raised by the appellant in this appeal, to-wit: That the provisions of Com-

piled General Laws of Florida (1927), Section 8087 (text of the statute being set forth in appellant's main brief at pages 14 and 15) is and constitutes a violation of the provisions of the 14th Amendment to the Constitution of the United States in that the statute denies to a certain class of persons or citizens of the State of Florida and of the United States the right to fish for sponge at all in the Gulf of Mexico nearer the shoreline than nine miles by the use of diving apparatus; or in other words those who fish by diving, of which the appellant is one. While under the same statute the privilege of fishing at any point in the Gulf of Mexico is given and granted to another class of persons, citizens of the State of Florida and of the United States, to-wit, all of those persons fishing for sponge by the use of hooks on the end of a long pole, or by any other method. Thus constituting an unlawful discrimination against a class with which the appellant belongs.

This question is presented to the Court in our main brief at page 14 where the Constitutional provision is quoted as follows:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States * * * nor deny to any person within its jurisdiction the equal protection of the laws."

This same section of the Constitution is again quoted at page 16 of our main brief.

The Court will further find that the same question was presented and argued to the Court in our reply brief at pages 7 and 8.

By reference to the Transcript of Record, page 5, paragraph numbered 3, the Court will find that the same question was presented to the Circuit Court of the State of Florida on appeal.

The matter was duly presented to the trial judge on a Motion to Quash the Information as shown by Transcript of Record, page 12.

This same question was presented to the Supreme Court of Florida as shown by Transcript of Record, page 48, Assignment of Error No. 3.

In the opinion of this Honorable Court filed April 28, 1941, this Court did say at pages 6 and 7 of the printed opinion:

> "If the United States may control the conduct of its citizens upon the high seas, we see no reason why the State of Florida may not likewise govern the conduct of its citizens upon the high seas with respect to matters in which the state has a legitimate interest and where there is no conflict with the Acts of Congress."

With this statement of the Court we are in full accord; but this Court overlooked entirely the question of discrimination between two classes of citizens of equal standing before the Court, the one being entirely prohibited and the other being granted entire immunity.

This Court at page 6 of the printed copy of the opinion uses this language:

> "No right of a citizen of any other state is here asserted."

This language used by this Court does carry the implication at least that a citizen of another State might be immune from prosecution under the Florida statute.

If this is correct and the Court intends to so hold; then the Section 8087 of Compiled General Laws of Florida violates Article 4, Section 2 of the Constitution of the United States which section is as follows:

> "Section 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

If, as held in the *Manchester* case cited in both of our briefs, a citizen of Alabama or a citizen of Georgia would be immune from prosecution in the use of diving apparatus for the purpose of taking sponge from the Gulf of Mexico at the same point off of the coast of Florida where the appellant was arrested; then it is obvious that this section of the Florida statute and the Constitutional provision as to boundaries taken in connection therewith does take away from a citizen of Florida, the appellant, the privileges and immunities of citizens of other States.

It is also true that this Honorable Court overlooked the further fact that this Act of the Legislature of Florida is not in any sense a regulatory act but is an act prohibiting entirely the taking of sponge from the Gulf of Mexico in a strip of water six miles wide and beginning three miles from the shoreline and extending into the Gulf of Mexico nine miles and that the southwest tip of Florida extending many miles beyond that because in actual operation the hookers, what few of them there are as shown by the Federal census of 1940, can not operate in water of a greater depth than twenty feet; therefore, the sponge lying in this prohibited strip six miles wide and extending the entire length of the West coast of Florida is in fact a total loss.

For these reasons the applicant respectfully prays the Court to grant a rehearing on the questions presented in this application. And in support of the application attaches hereto a short brief of some authorities on the questions included herein, and if permitted so to do will be glad to furnish a complete brief, the memorandum brief being submitted merely for the convenience of the Court.

Respectfully submitted,

W. B. Dickenson, Sr.,
Counsel for Appellant.

STATE OF FLORIDA,
County of Hillsborough, ss:

I, W. B. Dickenson, Sr., do hereby certify that I am one of counsel representing the appellant, Lambiris Skiriotes. I further certify that this application for rehearing is presented in good faith and not for delay.

Dated at Tampa, Hillsborough County, Florida, this 1st day of May, A. D. 1941.

W. B. DICKENSON, SR.,
One of Counsel for Appellant.

MEMORANDUM BRIEF IN SUPPORT OF APPLICATION FOR REHEARING.

We submit to the Court as a sound proposition of law that under the provisions of Article 4, Section 2 of the Constitution of the United States it is true that

A citizen of one State going into another State is entitled, under the Federal Constitution, to no greater privileges and immunities than are possessed by the citizens of that State.

It is equally true

That the citizen of every State is, under the Federal Constitution, entitled to all the privileges and immunities of a citizen of another State coming into that State.

This Court in the case of *Detroit* v. *Osborne*, 135 U. S. 492, 34 L. Ed. 260, said:

> "A citizen of one state coming into another is entitled, under the Federal Constitution, to no greater privileges and immunities than are possessed by citizens of that state."

This Court in the opinion said:

> "There should be, in all matters of local nature, but one law within the state; and that law is not what this Court might determine, but what the Supreme Court of the State has determined. A citizen of another state coming into Michigan may be entitled under the Federal Constitution to all of the privileges and immunities of citizens of that state, but under that Constitution he can claim no more. He walks the streets and highways in that state, entitled to the same rights and protection as, but none other than those accorded by its laws to its own citizens."

It is equally true that a citizen of the United States is entitled, under this Constitutional provision, to all of the rights, privileges and immunities of all citizens of the

United States under similar circumstances regardless of which State such persons are citizens of and it can not be said that a citizen of the United States on the high seas can be differentiated against in the enjoyment of any of his civil rights guaranteed to him under the Federal Constitution while on the high seas and another citizen of the United States merely because he is a citizen of a different State, treated differently.

This Court further said in *Blake* v. *McClung*, 172 U. S. 252; 19 Sup. Ct. Rep. 165, 43 L. Ed. 432:

> "The Constitutional guaranty of equal privileges and immunities to citizens forbids only legislation affecting citizens of the respective states as will substantially or practically put a citizen of one state in a condition of alienage when he is in, or when he removes to another state, or when asserting in another state the rights that commonly appertain to the people, by and for whom the government of the Union was established."

The Court will find a lengthy discussion of the questions involved here in the case of:

In *The Slaughter-House* Cases, 16 Wall. 76, 21 L. Ed. 395.

At page 408 of the Law Edition this Court in its opinion said:

> "The first occurance of the words 'privileges and immunities' in our constitutional history is to be found in the 4th of the Articles of the old Confederation.
>
> It declares 'that, the better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this Union, the free inhabitants of each of these states, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all of the privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other state,

and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, *impositions,* and *restrictions* as the inhabitants thereof respectively. In the Constitution of the United States, which superseded the Articles of Confederation, a corresponding provision is found in Section 2 of the 4th Article, in the following words; 'the citizen of each state shall be entitled to all of the privileges and immunities of citizens of the several states'.

There can be little question that the purpose of both of these provisions is the same, and that the privileges and immunities intended are the same in each. In the Articles of Confederation we have some of these specifically mentioned, and enough perhaps to give some general idea of the classes of civil rights meant by the phrase."

We direct the Court's attention to the fact that this Court said that the quotations above are the same and that

> "the citizens of *each state* shall be entitled to all the *privileges and immunities of citizens of the several states.*"

The Court in defining what these fundamental principles are also said:

> "They may all, however, be comprehended under the following general headnotes, protection by the Government, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject, nevertheless, to such restraints as the Government may prescribe for the general good of the whole."

Under this definition and under the restrictions imposed we submit to the Court that any law of any State abridging the rights of the citizens of that State and giving superior rights to the citizens of another State coming into that State must necessarily offend against this constitutional provision.

In this connection we direct the Court's attention also to the further language used by this Court in the opinion in the cited case as follows, in speaking of this constitutional provision:

> "Its sole purpose was to declare to the several states, that whatever those rights, as you grant or establish them to your own citizens, *or as you limit or qualify, or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the rights of the citizens of other states within your jurisdiction.*"

Certainly this statute offends against this Constitutional amendment under the above quoted language of this Court especially that part of the quoted language italicized.

Again in the opinion quoted from this Court did further say in defining the various privileges guaranteed by this Constitutional provision also:

> "*Another privilege of a citizen of the United States is to demand the care and protection of the Federal Government over his life, liberty, and property when on the high seas* or within the jurisdiction of a foreign government. Of this there can be no doubt, nor *that the right depends upon his character as a citizen of the United States.*"

We call the Court's attention to the fact that the Appellant is admittedly a citizen of the United States and is demanding the protection of his rights as a citizen of the United States; while exercising his property rights on the *high seas* as defined and adhered to by the Federal Government from 1794 to the present time.

In the case of:

Elias Ward vs. *State of Maryland*, 12 Wall. 418-443, 20 L. Ed. 449.

This Court discussing the question there presented which was a question of commerce and also involved the Second

Section of the 4th Article of the United States Constitution, this Court in the opinion said:

> "Congress possesses the power to regulate commerce among the several states as well as with commerce with foreign nations, and the Constitution also provides that the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states, and the defendant contends that the statute of the state under question, in its practical operation, is repugnant to both of those provisions to the Constitution, as it either works a complete prohibition of all commerce from the other states in goods to be sold by sample within the limits of the described district, or at least creates an unjust and onerous discrimination in favor of the citizens of the state enacting the statute, in respect to an extensive and otherwise lucrative branch of inter-state commerce, by securing to the citizens of that state, if not the exclusive control of the market, very important special privileges and immunities by exemption from burdensome requirements, and onerous exactions imposed upon the citizens of the other states desirous of engaging in the same mercantile pursuits in that district."

The appellant here contends that he is engaged in a commerce pursuit in inter-state commerce, i.e., the taking of commercial sponge on the high seas as defined by the Government of the United States and international law and that the attempt at regulation by the Florida Act of Legislature is null and void in so far as the same protects citizens of a foreign country and citizens of another state and is therefore unenforceable. That, therefore, the act in its practical enforcement creates an unjust and illegal discrimination in favor of citizens of a foreign government and citizens of another state from those immunities and privileges secured to the appellant, and therefore is a violation of the Constitutional provisions guaranteeing to him

as a citizen of the United States operating on the high seas all of the privileges and immunities of every other citizen of the United States.

The appellant is insisting to this Court that the act is an arbitrary, unreasonable distinction or discrimination against him as a citizen of the United States in favor of other citizens of the United States engaged in the same business and citizens of other nationalities engaged in the same business at the same place.

By reference to 16 Corpus Juris Secundum, page 995, Paragraph 505, Subdivision "b" the court will find this statement of the law:

> 'Legislation may be limited in scope; and it may be adjusted to differences in things and situations; but it may not make any arbitrary or unreasonable distinctions or discriminations; and within the sphere of its operation, it must accord substantially equal and uniform treatment to all persons similarly situated."

In support of this proposition we call the court's attention also to the case of:

Central Kentucky Nitro Gas Co. v. *Railroad Commission of Kentucky,* D. C. Ky., 37 F. (2d) 938;

also

United Mine Workers of America, Dist. 17 v. *Chafin, D. C. W. Va.,* 286 Fed. 959.

By further reference to 16 Corpus Juris Secundum, page 998, Sub. paragraph 2, the court will find this statement of law:

> "Equal protection of the laws is not denied by a legislative classification which is not palpably arbitrary and may reasonably be conceived to rest on some real and substantial differences or distinctions bearing a just and fair relation to the legislation."

We insist to the court that this law in itself is shown to be arbitrary, unreasonable, oppressive and a discrimination against the appellant and if so it falls within the following decisions of this Court:

Frost v. *Corporations Commission of the State of Oklahoma*, 49 S. Ct. 235, 278 U. S. 515, 73 L. Ed. 483;

Norfolk County Water Co. v. *City of Norfolk, Virginia*, 158 C. C. A. 606, 38 S. Ct. 192, 245 U. S. 672, 62 L. Ed. 540.

By reference to 12 Corpus Juris at page 1128, paragraph 855, the court will find this statement:

> "The provision of the 14th Amendment to the Federal Constitution that 'No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws', have been construed to grant to all persons equality before the law, in the sense that they render void all state statutes which make any unreasonable or arbitrary discrimination between different persons or classes of persons."

The appellant is claiming his right as a citizen of the United States and to all of the rights enjoyed by any other citizen of the United States and all of the rights enjoyed by citizens under protection of a foreign country. The latter two classes certainly are not amenable to the punishment accorded to the appellant under the Florida statute. In this connection we call the court's attention to the following cases:

Union Sewer Pipe Co. v. *Connelly*, 184 U. S. 540, 22 S. Ct. 431, 46 L. Ed. 679.

The Supreme Court of Florida has a number of times recognized the above principles of law in the case of:

State v. *Ives*, 123 Fla. 401, 167 So. 394.

The court in the paragraph of the opinion numbered 4 at page 399 of the Southern Reporter said this:

> "It is within the power of the legislature to regulate some occupation and not regulate others, but private rights secured by the Constitution must not be invaded and the regulations must operate with substantial fairness upon all persons similarly situated."

Citing with approval the case of:

Rast v. *Van Deman and Lewis Co.*, 240 U. S. 342, 36 S. Ct. 370, 60 L. Ed. 679.

Again in the case of:

Richey, et al. v. *Wells*, 123 Fla. 284, 166 So. 817.

The court at page 818 of the Southern in paragraph numbered 1, 2, and 3 said:

> (1) "It is settled law that under the Fourteenth Amendment to the Constitution of the United States an unjust and illegal discrimination may arise out of the enactment of a legislative measure that makes such unjust and illegal discrimination possible, although it is not expressly required by the terms of the law itself as written.
>
> (2) Though a law be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an unequal hand, so as to practically make unjust and illegal discriminations between persons in similar circumstances material to their rights, the denial of equal justice is still within the prohibition of the Federal Constitution under the Fourteenth Amendment. Thus, while sovereignty is not subject to law, for it is the author and source of law, the fundamental rights of life, liberty, and the pursuit of happiness are to be considered as individual possessions, secured as affirmed by the Declaration of Independence, which ante-dates both State and Federal Constitutions, and are therefore protected by both, because the Constitutions themselves so specifically declare.

(3) This means that the State itself, in administering or exercising its acknowledged powers of lawmaking, must restrain its legislative acts within the bounds of those maxims of constitutional law which ordain that no man may be compelled to hold his life, his means of living, or any material right essential to the enjoyment of life, at the mere will of another acting under laws that are not just and equal in their intended application to every one similarly situated."

Citing:

Yick Wo. v. *Hopkins,* 118 U. S. 356, 6 S. Ct. 1064, 30 L. Ed. 220.

Again in the case of:

Di Lustro v. *Penton, Sheriff,* 106 Fla. 160, 142 So. 898.

The court in paragraph numbered 1 at page 900 of the Southern Reporter said:

(1) The constitutional provision for the "Equal protection of the laws" seeks "an equality of treatment of all persons, even though all enjoy the protection of due process. It does not prohibit legislation which is limited either in the objects to which it is directed or by the territory within which it is to operate. It merely requires that all persons subject to such legislations shall be treated alike, under like circumstances and conditions, both in privileges conferred and liabilities imposed. It is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class, and reasonable grounds exist for making a distinction between those who fall within such class and those who do not." Cooley's Const. Limitations, pages 824, 825.

The court also said:

(3) "Classifications adopted for legislative regulation should have some just relation to, or reasonable basis in, essential differences of conditions and circum-

stances with reference to the subject regulated, and should not be merely arbitrary; and all similarly situated or having similar legal duties and obligations in regard to the subject regulated should be included in one class, at least where there are no practical differences that are sufficient to legally warrant a further or special classification in the interest of the general welfare." See, also, Cooley's Constitutional Limitations (8th Ed.) 804.

We do not wish to make this memorandum brief burdensome to the court but if the court will permit us to do so we will be glad to file a complete brief in support of the same.

Respectfully submitted,

W. B. DICKENSON,
W. B. DICKENSON, JR.,
Attorneys for Appellant.

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SUPREME COURT OF THE UNITED STATES.

No. 658.—October Term, 1940.

Lambiris Skiriotes, *vs.* The State of Florida. } Appeal from the Supreme Court of the State of Florida.

[April 28, 1941.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

Appellant, Lambiris Skiriotes, was convicted in the county court of Pinellas County, Florida, of the use on March 8, 1938, of diving equipment in the taking of sponges from the Gulf of Mexico off the coast of Florida in violation of a state statute. Compiled General Laws of Florida (1927), Section 8087. The conviction was affirmed by the Supreme Court of Florida (197 So. 736) and the case comes here on appeal.

The case was tried without a jury and the facts were stipulated. The statute, the text of which is set forth in the margin,[1] forbids the use of diving suits, helmets or other apparatus used by deep sea divers, for the purpose of taking commercial sponges from the Gulf of Mexico, or the Straits of Florida or other waters within the territorial limits of that State.

The charge was that appellant was using the forbidden apparatus "at a point approximately two marine leagues from mean low tide on the West shore line of the State of Florida and within the territorial limits of the County of Pinellas". The state court held that

[1] The statute, originally Section 4 of Chapter 7389 of the Laws of Florida of 1917, carried forward as Section 5846 of the Revised General Statutes of Florida and as Section 8087 of the Compiled General Laws of 1927, is as follows:

"It shall be unlawful for any person, persons, firm or corporation to maintain and use for the purpose of catching or taking commercial sponges from the Gulf of Mexico, or the Straits of Florida or other waters within the territorial limits of the State of Florida, diving suits, helmets or other apparatus used by deep sea divers.

"Anyone violating any of the provisions of this section shall be fined in the sum not exceeding five hundred dollars or by imprisonment not exceeding one year, or by both such fine and imprisonment." See Lipscomb v. Gialourakis, 101 Fla. 1130.

the western boundary of Florida was fixed by the state constitution of 1885 at three marine leagues (nine nautical miles) from the shore; that this was the same boundary which had been defined by the state constitution of 1868 to which the Act of Congress had referred in admitting the State of Florida to representation in Congress. Act of June 25, 1868, 15 Stat. 73. The state court sustained the right of the State to fix its marine boundary with the approval of Congress, and concluded that the statute was valid in its application to appellant's conduct.

By motions to quash the information and in arrest of judgment, appellant contended that the constitution of Florida fixing the boundary of the State and the statute under which he was prosecuted violated the Constitution and treaties of the United States; that the criminal jurisdiction of the courts of Florida could not extend beyond the international boundaries of the United States and hence could not extend "to a greater distance than one marine league from mean low tide" on the mainland of the State and adjacent islands included within its territory.

In support of this contention appellant invoked several provisions of the Constitution of the United States, to wit, Article I, Section 10, Clauses 1 and 3, Article II, Section 2, Clause 2, Article VI, and the Fourteenth Amendment. Appellant also relied upon numerous treaties of the United States, including the Treaty with Spain of February 22, 1919, and the treaties with several countries, signed between 1924 and 1930, inclusive, for the prevention of smuggling of intoxicating liquors. There were also introduced in evidence diplomatic correspondence and extracts from statements of our Secretaries of State with respect to the limits of the territorial waters of the United States. These contentions were presented to the highest court of the State and were overruled.

The first point of inquiry is with respect to the status of appellant. The stipulation of facts states that appellant "is by trade and occupation a deep-sea diver engaged in sponge fishery, his resident address being at Tarpon Springs, Pinellas County, Florida", and that he "has been engaged in this business for the past several years". Appellant has not asserted or attempted to show that he is not a citizen of the United States, or that he is a citizen of any State other than Florida, or that he is a national of any foreign country. It is also significant that in his brief in this Court,

replying to the State's argument that as a citizen of Florida he is not in a position to question the boundaries of the State as defined by its constitution, appellant has not challenged the statement as to his citizenship, while he does contest the legal consequences which the State insists flow from that fact.

It further appears that upon appellant's arrest for violation of the statute, he sued out a writ of *habeas corpus* in the District Court of the United States and was released, but this decision was reversed by the Circuit Court of Appeals. *Cunningham, Sheriff*, v. *Skiriotes*, 101 F. (2d) 635. That court thought that the question of the statute's validity should be determined in orderly procedure by the state court subject to appropriate review by this Court, but the court expressed doubt as to the right of the appellant to raise the question, saying: "Skiriotes states he is a citizen of the United States resident in Florida, and therefore is a citizen of Florida. His boat, from which his diving operations were conducted, we may assume was a Florida vessel, carrying Florida law with her, but of course as modified by superior federal law". *Id.*, pp. 636, 637.

In the light of appellant's statements to the federal court, judicially recited, and upon the present record showing his long residence in Florida and the absence of a claim of any other domicile or of any foreign allegiance, we are justified in assuming that he is a citizen of the United States and of Florida. Certainly appellant has not shown himself entitled to any greater rights than those which a citizen of Florida possesses.

In these circumstances, no question of international law, or of the extent of the authority of the United States in its international relations, is presented. International law is a part of our law and as such is the law of all States of the Union (*The Paquete Habana*, 175 U. S. 677, 700), but it is a part of our law for the application of its own principles, and these are concerned with international rights and duties and not with domestic rights and duties. The argument based on the limits of the territorial waters of the United States, as these are described by this Court in *Cunard Steamship Company* v. *Mellon*, 262 U. S. 100, 122, and in diplomatic correspondence and statements of the political department of our Government, is thus beside the point. For, aside from the question of the extent of control which the United States may exert in the interest of self-

protection over waters near its borders, although beyond its territorial limits,[2] the United States is not debarred by any rule of international law from governing the conduct of its own citizens upon the high seas or even in foreign countries when the rights of other nations or their nationals are not infringed. With respect to such an exercise of authority there is no question of international law,[3] but solely of the purport of the municipal law which establishes the duty of the citizen in relation to his own government. *American Banana Co.* v. *United Fruit Co.*, 213 U. S. 347, 355, 356; *United States* v. *Bowman*, 260 U. S. 94; *Cook* v. *Tait*, 265 U. S. 47; *Blackmer* v. *United States*, 284 U. S. 421, 437. Thus, a criminal statute dealing with acts that are directly injurious to the government, and are capable of perpetration without regard to particular locality, is to be construed as applicable to citizens of the United States upon the high seas or in a foreign country, though there be no express declaration to that effect. *United States* v. *Bowman*, *supra*.[4] The *Bowman* case arose under Section 35 of the Criminal Code. 18 U. S. C., Sec. 80. Another illustration is found in the statute relating to criminal correspondence with foreign governments. 18 U. S. C., Sec. 5. In *Cook* v. *Tait*, *supra*, we held that Congress could impose a tax upon income received by a citizen of the United States who was domiciled in a foreign country although the income was derived from property there located. In *Blackmer* v. *United States*, *supra*, the validity of an Act of Congress requiring a citizen of the United States residing in France to return to this country for the purpose of giving testimony and the service of a subpoena upon him personally by an American consul were sustained.

For the same reason, none of the treaties which appellant cites are applicable to his case. He is not in a position to invoke the

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[2] See Jessup, "The Law of Territorial Waters and Maritime Jurisdiction", Introductory Chapter, p. XXXIII, also pp. 9 *et seq.*, 80 *et seq.*; Church v. Hubbart, 2 Cranch 187; The Grace and Ruby, 283 Fed 475; The Henry L. Marshall, 286 Fed. 260, 292 Fed. 486; United States v. Ford, 3 F. (2d) 643; 40 Harv. L. R. 1.

[3] Oppenheim, International Law, 4th ed., Vol. I, § 145, p. 281; Story, Conflict of Laws, 8th ed., § 540, p. 755; Moore's International Law Digest, Vol. II, pp. 255, 256; Hyde, International Law, Vol. I, § 240, p. 424; Borchard, Diplomatic Protection of Citizens Abroad, § 13, pp. 21, 22.

[4] As to venue of prosecutions for offenses committed upon the high seas or elsewhere out of the jurisdiction of any particular state or district see 28 U. S. C., Sec. 102.

rights of other governments or of the nationals of other countries. If a statute similar to the one in question had been enacted by the Congress for the protection of the sponge fishery off the coasts of the United States there would appear to be no ground upon which appellant could challenge its validity.

The question then is whether such an enactment, as applied to those who are subject to the jurisdiction of Florida, is beyond the competency of that State. We have not been referred to any legislation of Congress with which the state statute conflicts. By the Act of August 15, 1914[5] (38 Stat. 692, 16 U. S. C., Sec. 781), Congress has prohibited "any citizen of the United States, or person owing duty of obedience to the laws of the United States" from taking in the waters of the Gulf of Mexico or the Straits of Florida outside of state territorial limits" any commercial sponges which are less than a given size, or to possess such sponges or offer them for sale. But that Act is limited to the particular matter of size and does not deal with the divers' apparatus which is the particular subject of the Florida statute. According to familiar principles, Congress having occupied but a limited field, the authority of the State to protect its interests by additional or supplementary legislation otherwise valid is not impaired. *Reid* v. *Colorado*, 187 U. S. 137, 147, 150; *Savage* v. *Jones*, 225 U. S. 501, 533; *Mintz* v. *Baldwin*, 289 U. S. 346, 350; *Kelly* v. *Washington*, 302 U. S. 1, 10. It is also clear that Florida has an interest in the proper maintenance of the sponge fishery and that the statute so far as applied to conduct within the territorial waters of Florida, in the absence of conflicting federal legislation, is within the police power of the State. *Manchester* v. *Massachusetts*, 139 U. S. 240, 266. See, also, *Cooley* v. *Board of Port Wardens*, 12 How. 299; *Morgans &c. S.S. Co.* v. *Louisiana*, 118 U. S. 455; *Compagnie Francaise* v. *Board of Health*, 186 U. S. 380; *Minnesota Rate Cases*, 230 U. S. 352, 402-410; *California* v. *Thompson*, No. 687, decided ..... Nor is there any repugnance in the provisions of the statute to the equal protection clause of the Fourteenth Amendment. The statute applies equally to all persons within the jurisdiction of the State.

Appellant's attack thus centers in the contention that the State has transcended its power simply because the statute has been

[5] This Act repealed the Act of June 20, 1906, 34 Stat. 313, which was before this Court in the case of The Abby Dodge, 223 U. S. 166.

applied to his operations inimical to its interests outside the territorial waters of Florida. The State denies this, pointing to its boundaries as defined by the state constitution of 1868, which the State insists had the approval of Congress and in which there has been acquiescence over a long period. See *Lipscomb* v. *Gialourakis,* 101 Fla. 1130, 1134, 1135; *Pope* v. *Blanton,* 10 F. Supp. 18, 22.[6] Appellant argues that Congress by the Act of June 25, 1868,[7] to which the state court refers, did not specifically accept or approve any boundaries as set up in the state constitution but merely admitted Florida and the other States mentioned to representation in Congress. And, further, that if Congress can be regarded as having approved the boundaries defined by the state constitution, these have been changed by the treaties with foreign countries relating to the smuggling of intoxicating liquors, in which the principle of the three-mile limit was declared.

But putting aside the treaties, which appellant has no standing to invoke, we do not find it necessary to resolve the contentions as to the interpretation and effect of the Act of Congress of 1868. Even if it were assumed that the *locus* of the offense was outside the territorial waters of Florida, it would not follow that the State could not prohibit its own citizens from the use of the described divers' equipment at that place. No question as to the authority of the United States over these waters, or over the sponge fishery, is here involved. No right of a citizen of any other State is here asserted. The question is solely between appellant and his own State. The present case thus differs from that of *Manchester* v. *Massachusetts, supra,* for there the regulation by Massachusetts of the menhaden fisheries in Buzzards Bay was sought to be enforced as against citizens of Rhode Island (*Id.,* p. 242) and it was in that relation that the question whether Buzzards Bay could be included within the territorial limits of Massachusetts was presented and was decided in favor of that Commonwealth. The question as to the extent of the authority of a State over its own citizens on the high seas was not involved.

If the United States may control the conduct of its citizens upon the high seas, we see no reason why the State of Florida may not

[6] The bill in this case was dismissed because of the absence of the jurisdictional amount. Pope v. Blanton, 299 U. S. 521.

[7] 15 Stat. 73.

likewise govern the conduct of its citizens upon the high seas with respect to matters in which the State has a legitimate interest and where there is no conflict with acts of Congress. Save for the powers committed by the Constitution to the Union, the State of Florida has retained the status of a sovereign. Florida was admitted to the Union "on equal footing with the original States, in all respects whatsoever".[8] And the power given to Congress by Section 3 of Article IV of the Constitution to admit new States relates only to such States as are equal to each other "in power, dignity and authority, each competent to exert that residuum of sovereignty not delegated to the United States by the Constitution itself". *Coyle* v. *Oklahoma*, 221 U. S. 559, 567.

There is nothing novel in the doctrine that a State may exercise its authority over its citizens on the high seas. That doctrine was expounded in the case of *The Hamilton*, 207 U. S. 398. There, a statute of Delaware giving damages for death was held to be a valid exercise of the power of the State, extending to the case of a citizen of that State wrongfully killed on the high seas in a vessel belonging to a Delaware corporation by the negligence of another vessel also belonging to a Delaware corporation. If it be said that the case was one of vessels and for the recognition of the formula that a vessel at sea is regarded as part of the territory of the State, that principle would also be applicable here. There is no suggestion that appellant did not conduct his operations by means of Florida boats. That he did so conduct them was assumed by the Circuit Court of Appeals in dealing with appellant's arrest in *Cunningham, Sheriff*, v. *Skiriates, supra*, and that reasonable inference has not in any way been rebutted here.

But the principle recognized in *The Hamilton, supra*, was not limited by the conception of vessels as floating territory. There was recognition of the broader principle of the power of a sovereign State to govern the conduct of its citizens on the high seas. The court observed that "apart from the subordination of the State of Delaware to the Constitution of the United States" there was no doubt of its power to make its statute applicable to the case at bar. And the basic reason was, as the court put it, that when so applied "the statute governs the reciprocal liabilities of two cor-

[8] Act of March 3, 1845, 5 Stat. 742.

porations, existing only by virtue of the laws of Delaware, and permanently within its jurisdiction, for the consequences of conduct set in motion by them there, operating outside the territory of the State, it is true, but within no other territorial jurisdiction". If confined to corporations, "the State would have power to enforce its law to the extent of their property in every case". But the court went on to say that "the same authority would exist as to citizens domiciled within the State, even when personally on the high seas, and not only could be enforced by the State in case of their return, which their domicil by its very meaning promised, but in proper cases would be recognized in other jurisdictions by the courts of other States". That is, "the bare fact of the parties being outside the territory in a place belonging to no other sovereign would not limit the authority of the State, as accepted by civilized theory". *The Hamilton, supra,* p. 403. When its action does not conflict with federal legislation, the sovereign authority of the State over the conduct of its citizens upon the high seas is analogous to the sovereign authority of the United States over its citizens in like circumstances.

We are not unmindful of the fact that the statutory prohibition refers to the "Gulf of Mexico, or the Straits of Florida or other waters within the territorial waters of the State of Florida". But we are dealing with the question of the validity of the statute as applied to appellant from the standpoint of state power. The State has applied it to appellant at the place of his operations and if the State had power to prohibit the described conduct of its citizen at that place we are not concerned from the standpoint of the Federal Constitution with the ruling of the state court as to the extent of territorial waters. The question before us must be considered in the light of the total power the State possesses (*Castillo* v. *McConnico,* 168 U. S. 674, 684; *Hebert* v. *Louisiana,* 272 U. S. 312, 316; *United Gas Co.* v. *Texas,* 303 U. S. 123, 142), and so considered we find no ground for holding that the action of the State with respect to appellant transcended the limits of that power.

The judgment of the Supreme Court of Florida is affirmed.

Affirmed.